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Ontario. Legislative Assembly [Committees]  
Select committee on Administration of  
justice  
Proceedings



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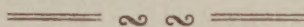
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PROCEEDINGS  
of the  
SELECT COMMITTEE OF THE  
ONTARIO LEGISLATIVE ASSEMBLY

APPOINTED TO ENQUIRE INTO AND REPORT  
UPON CERTAIN MATTERS CONCERNING THE  
ADMINISTRATION OF JUSTICE IN THE PROV-  
INCE OF ONTARIO.



Vol. 19.

Thursday, August 23, 1951.



R. C. Sturgeon,  
Official Reporter,  
Room 121,  
Parliament Bldgs.







N I N E T E E N T H      D A Y

Toronto, Ontario,  
Thursday, August 23, 1951,  
At 10.30 o'clock a.m.

- - - - -

---The further proceedings of this Committee re-convened  
pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

- - - - -

THE CHAIRMAN: Gentlemen, shall we proceed?

OSWALD ELMER LENNOX,

A witness previously heard and now recalled, who,  
having been already sworn, continues his testimony  
as follows:

MR. JOLLIFFE: I wonder, Mr. Chairman if we  
are any further advanced to-day? I mean, can we make  
any decision now about to-morrow or next week? I  
would suggest we fix our hours for meeting to-morrow.

MR. DOWNER: I would suggest we meet at ten







o'clock to-morrow.

THE CHAIRMAN: We might meet earlier.

MR. JOLLIFFE: Ten o'clock would only give us two hours.

MR. DOWNER: Three hours, until one o'clock.

THE CHAIRMAN: As far as I am concerned, any hour that is satisfactory to the Committee will be satisfactory to me.

MR. HOUCK: I am satisfied also.

MR. VILLENEUVE: And so am I.

MR. JOLLIFFE: I hate to get Brother Downer up so early in the morning, but after all, he comes from a rural riding --

MR. DOWNER: I can get up all right. I was thinking of the rest of the Committee.

THE CHAIRMAN: As long as Mr. Jolliffe takes the responsibility for setting the time at such an early hour.

MR. JOLLIFFE: At the risk of getting into







trouble with Brother Downer, I move we meet at nine o'clock to-morrow morning, and sit from nine to twelve.

MR. DOWNER: I was thinking of ten to one, starting at nine, and sitting until twelve, is the same thing.

MR. HOUCK: I will second that motion.

(Motion agreed to).

THE CHAIRMAN: With great regret, I am forced by a majority vote of the Committee to declare that the motion has been carried.

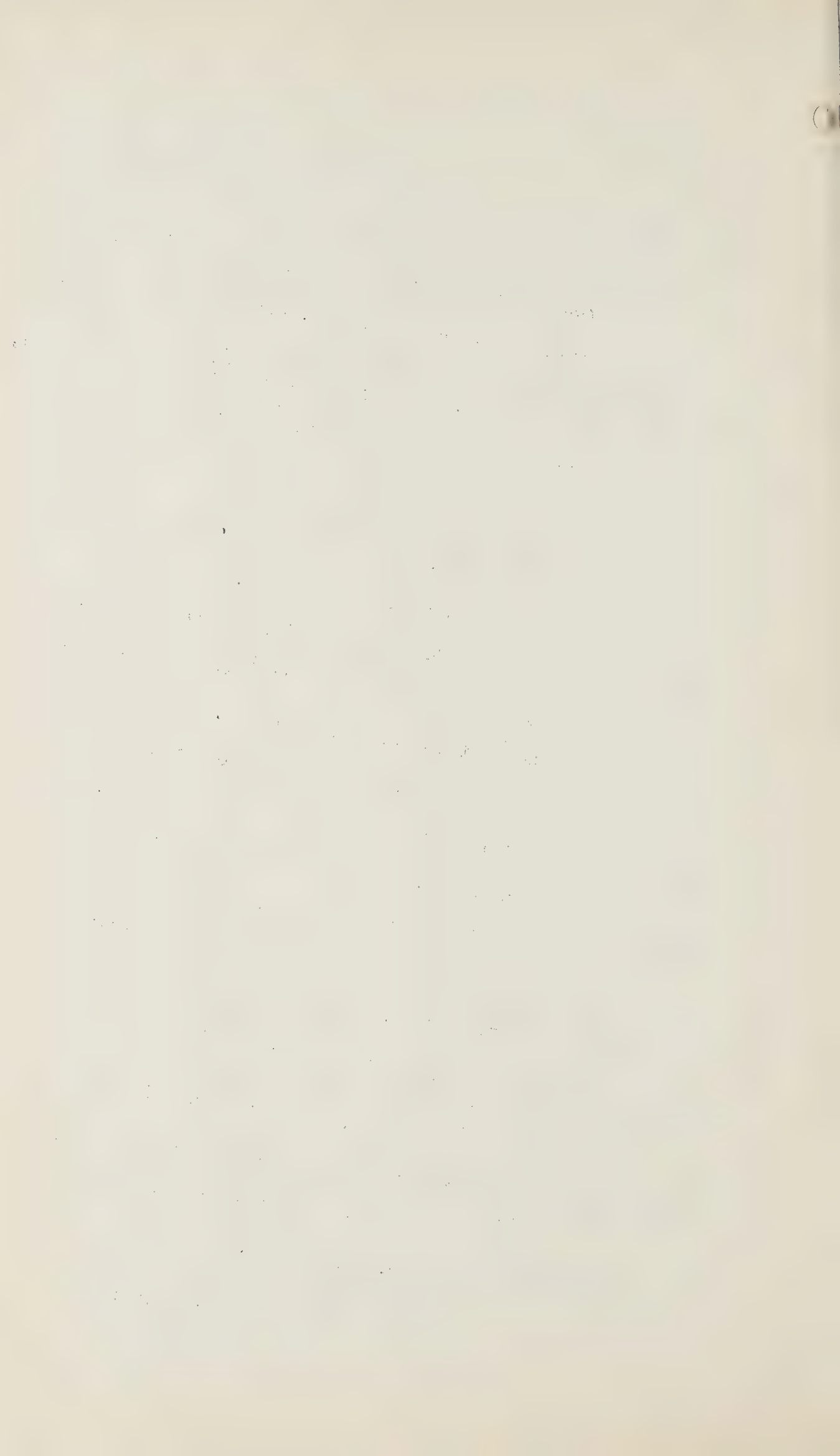
MR. JOLLIFFE: I do not like meeting at nine o'clock any better than anybody else, but the difficulty is, I do not think it is very practicable to meet in the afternoon.

THE CHAIRMAN: I do not think it is possible to-morrow.

Next week, shall we start on Monday?

MR. DOWNER: Monday is rather a difficult day for two or three members of the Committee. I would say it is very difficult for me, and very difficult for Mr. Villeneuve.

THE CHAIRMAN: That is the day following your





heavy duties, Mr. Downer?

MR. DOWNER: There is no way down. The train comes down on Sunday night too early.

MR. GRUMMETT: Have your services a little early, or cut them short. Give the congregation a "break", for once.

MR. VILLENEUVE: I do not want to disarrange anything. If it is the will of the majority to meet on Monday, it is quite all right with me.

MR. GRUMMETT: I was rather thinking of the meeting on Monday. I think we might get Friday off.

MR. HOUCK: Without saying anything against the reverent gentleman (Mr. Downer), I would rather meet on Monday, and have Friday off.

MR. JOLLIFFE: Maybe I can bring the Reverend Mr. Downer down. Where are you, Mr. Downer?

MR. DOWNER: At Duntroon.

MR. JOLLIFFE: Oh, oh.

THE CHAIRMAN: Shall we meet then on Monday at 10.30?

1. The first part of the paper

2. The second part of the paper

3. The third part of the paper

4. The fourth part of the paper

5. The fifth part of the paper

6. The sixth part of the paper

7. The seventh part of the paper

8. The eighth part of the paper

9. The ninth part of the paper

10. The tenth part of the paper

11. The eleventh part of the paper

12. The twelfth part of the paper

13. The thirteenth part of the paper

14. The fourteenth part of the paper

15. The fifteenth part of the paper

16. The sixteenth part of the paper

17. The seventeenth part of the paper

18. The eighteenth part of the paper

19.

20.



MR. JOLLIFFE: Now, just a moment before we decide that, Mr. Chairman. What will we proceed with next week? I assume -- I do not know -- but I am assuming that Mr. Lennox' evidence will be completed to-day. Then we will have the broker-dealers' representative? If we can finish with the broker-dealers in a day or so -- although I do not suppose we will -- what will be the next?

THE CHAIRMAN: I do not know what other witnesses we should call in connection with the securities business particularly.

As a matter of fact, I have nobody else in mind at the moment, unless you wish to question any other officials or anybody else connected with the business.

MR. GRUMMETT: We might ask an investigator one or two questions. I would like their information. I know Mr. Lennox is opposed to the investigators being given the power of policemen, but I was wondering what his investigators themselves think about it. Are there not one or two of your men, Mr. Lennox, who are ex-policemen?

THE WITNESS: Three of them are. There is no





question as to what their evidence will be.

THE CHAIRMAN: If you want their evidence.

THE WITNESS: Mr. Cox and Mr. Swain were on the Forest Hill Police Department, and are experienced policemen and very experienced investigators.

MR. GRUMMETT: One would be enough, would it not?

MR. JOLLIFFE: I would think so.

THE CHAIRMAN: Have you anyone in particular you would like to hear.

MR. GRUMMETT: I am not acquainted with them.

THE CHAIRMAN: Perhaps Mr. Lennox will ask the one he thinks has the widest experience to be available, and if you want to follow anything up by questioning somebody else in addition, you are free to do that.

THE WITNESS: One of the investigators?

THE CHAIRMAN: Yes.





THE WITNESS: Either Mr. Cox or Mr. Swain. Incidentally, Mr. Swain is away on holidays, and Mr. Cox is the logical man.

MR. JOLLIFFE: Mr. Cox's name appears in a number of your decisions.

THE WITNESS: Yes, and Mr. Cox was present at the raid the other night.

MR. HOUCK: I think we should have the senior counsel of the Commission here, so we can pay our respects to him, for him paying his respects to us, and bowing to us when he arrived and departed.

Incidentally, I see that Mr. Bigelow has made the statement that he will be glad to appear before the Committee.

MR. GRUMMETT: I did not see that. What paper was it in?

MR. HOUCK: One of last night's papers.

THE CHAIRMAN: Is the program now satisfactory, or have you anything else in mind?

MR. JOLLIFFE: I think that is satisfactory. Although I do not think we should meet more than





three or four days next week.

THE CHAIRMAN: Whatever you say.

MR. GRUMLETT: Four days will be all right.

THE CHAIRMAN: The sooner the better for me.  
There is a lot piling up.

MR. GRUMLETT: I would judge in October we  
will have to meet nearly every week.

MR. JOLLIFFE: And try to finish this up.

MR. HOUCK: We may be busy otherwise in  
October.

MR. VILLENEUVE: One never knows.

MR. HOUCK: Maybe the Chairman could enlighten  
us.

THE CHAIRMAN: By Jove, I cannot, I cannot  
enlighten you. I cannot say anything, because I do  
not know. I have never spoken a true word.

Shall we proceed now with Mr. Lennox?

THE WITNESS: With your permission, Mr.  
Chairman and gentlemen, I would like to clear up a  
possible misconception, which I think is important





enough to clear up.

I made reference yesterday to certain investigators,--or an investigator -- acting on information supplied by a local informant. If I created the impression that the Canadian postal authorities acted on that type of information, I wish to correct that. I referred to investigations evidently made by United States postal authorities, and naturally that is only a matter of opinion, but to my understanding, it is backed up by collateral evidence, and I would very much like to refer to the type of evidence which has influenced my opinion, without disclosing the name of the official or the outside province which furnished that information, because I wish to continue on friendly relationships, and some of these things can very well be misunderstood, especially if the person involved has not a complete transcript of the evidence before him.

I crave your indulgence in that respect, and I refer to a fraud order which was issued in connection with an oil promotion situated in a western province, and I read this extract --

BY MR. JOLLIFFE:

Q This is an extract from what?



A From the fraud order.

Q From the fraud order?

A Yes.

Q Made by the United States Post Office?

A Yes. May I proceed?

BY THE CHAIRMAN:

Q Yes.

A (Reading):

"Lloydminster is a different story but there is no fortune in Lloydminster oil. \*\*\*the oil is a thick viscous oil which will not flow through a pipe line and has to be pumped from the wells. The average over-all production from a Lloydminster well will not be more than 30 barrels per day and the price of the oil is about \$1.15. The capital costs and the operating costs are no doubt small but the yield is equally small and Lloydminster has aptly been described as a 'poor man's field'. It will in the course of time return the capital invested, pay operating costs and reasonably good wages to the owner, but no fortunes will ever



1900-1901

be made in the Lloydminster field."

That is the end of the excerpt.

BY THE CHAIRMAN:

Q That is an excerpt from what?

A That is part of the material on which this order is founded.

Q Yes, but who made that statement?

A I am coming to that point, Mr. Chairman.  
That statement was made by a Canadian official.

In the same letter, this public official has stated to the S.E.C. that in advertising statements made of the type and character above referred to, would be classified by him as pure "sucker bait".

I would like to make a few observations in connection with Lloydminster oil. We all know it is not comparable to the lighter oil in Alberta. But there are one or two uses being found for the Lloydminster oil, and I have heard that from a scientific point of view, it has become very important. The price is \$1.15, and I can recall the price at \$1.35.

The picture in Saskatchewan in Lloydminster is changing every day, because the Husby Oil Company is contracting for the output of these wells,





the same as the other large oil companies contracting in Alberta, and the contract includes servicing the wells, as well as taking the product.

The point I wish to make is that if Ontario wants me to be an expert and go into the merits, then I would feel justified in making a statement like that under some consideration. But our legislation is framed upon the idea that we are not experts, and that we do not go into the merits of an issue, and that is the same pattern of legislation which is established federally in the United States.

I have other examples showing where fraud orders are based on opinions.

BY THE CHAIRMAN:

Q That fraud order (indicating) was based upon the opinion which you read?

A In part.

Q That is the sort of evidence which was used to establish the foundation for the fraud order?

A But I am more directing my remarks to the fact that when I say that the United States authorities evidently acted on the opinion of a local informant, there is some basis for that opinion, and I repeat



what I said yesterday, that in my opinion the local informant had an axe to grind, because the fraud orders in the United States by-passed a definite group, who were operating in Toronto.

BY MR. JOLLIFFE:

When you say "had an axe to grind", you are not referring to a public official?

A No, I am distinguishing --

Q Just a moment, Mr. Lennox, I do not understand that statement as you have just explained it. I do not understand the statement of the public official quoted to relate to the merits of the issue. I definitely understood that quotation to relate to the statements which had been made on behalf of the issuer. If you will read the language again which you have just quoted, I think you will see what I mean. I think the picture demands we should know what was claimed.

THE CHAIRMAN: Yes, there are one or two points which need to be cleared up there. It is not quite clear in my mind, as to just what refers to what.

MR. JOLLIFFE: If you will read the concluding





words of the public officials remarks.

THE CHAIRMAN: I think there may have been a missing link in that chain.

THE WITNESS: All right. I will read back farther:

"With respect to this area --"

--meaning the Lloydminster area --

"following the quotations from the letter"--

BY THE CHAIRMAN:

Q. Some other provincial authority?

A. Yes.

MR. JOLLIFFE: Read again the concluding words. I think you will find that the concluding words relate to the representations made about this area.

THE CHAIRMAN: We have not heard that representation. All we have heard is the statement made by an official.

THE WITNESS: I guess I am not getting my point over. I am not criticizing the fraud order. It





may be justified. I am substantiating the statement I made yesterday that the investigator acted upon information obtained locally, and when I say "locally", I mean the province of Ontario, and probably in Toronto.

My opinion in this matter is supported in some degree by the fact that in other cases they did act on the opinion of the residents of the Dominion of Canada.

BY MR. JOLLIFFE:

Q What was the representation which that public official corrected?

A I think this is of very little value, because most of them were made over the telephone.

BY THE CHAIRMAN:

Q Is there any written literature which applies to this fraud order?

A I am just looking for it (referring to document).

MR. GRUMETT: The mere fact that the field might never be a very wealthy field would surely not give rise to a fraud order.

1. The first part of the paper

is devoted to a general

discussion of the problem

and the methods used

in the investigation

The results of the

investigation are

presented in the

following sections

2

3

4

THE CHAIRMAN: There are two aspects to this. First, the statement which might have been made by the vendor of the stock or the broker-dealer, or whoever it was, whether or not that had any element of misrepresentation. The other is whether a securities administration should take into consideration the opinion of some official as to the future possibilities of an oil development, as to the merits of the property itself.

THE WITNESS: I can read from part of the order, although I think it has nothing to do with the point I am trying to make.

THE CHAIRMAN: I think we should know a little more about this.

THE WITNESS: (Reading)

"The advertising material used by Allison is before me as a part of the report of the Commission and in the form of independent complaints addressed to the Post Office Department by persons throughout the United States who have received the literature. What appears to be the initial contact with





his prospective purchaser is a circular entitled 'money-making Opportunities in Western Canada Oils'. This circular offers to the reader 'the opportunity for a chance to profit' in Canada's oil fields. It promises an opportunity to participate in 'Canada's exciting Oil Boom -- And An Unusual Opportunity For Profit In Canada's Great New Dollar-Earning Oil Industry.' This circular, as do so many others used by other concerns against which fraud orders have been issued, refers to the several oil fields in Canada which, during the past few years have proved to be prolific producers of oil. It speaks of the 'proven fields of Leduc, Woodbend, Lloydminster'. It tells how \$100 invested in such companies as Home Oil, Central Leduc and Trend Petroleum in 1947 grew to \$2000 in 1949.

This 'softening-up' circular then presents what Allison says 'may be your opportunity to share in Canada's great oil wealth'. A new company has been formed, it is said; 'an aggressive company with extensive



oil and gas rights \*\*\*in Three Proven Oil Areas'. It is further stated that 'These properties are situated in Lloydminster, one of Canada's fastest-growing fields\*\*\*'. The name of this Company is revealed to be Capewell.

Other literature follows whether or not the addressees of the original material was induced to seek further particulars. With this follow-up material there is a subscription form upon which the prospective purchaser is to indicate his willingness to participate in 'Canada's Expanding Oil Boom'. The price per share for stock in Capewell is 35¢. The offer is limited supposedly to 100 shares. The circular accompanying this form contains further representations concerning the stock."

BY THE CHAIRMAN:

Q You say the offering is limited to one hundred thousand shares? What does that mean? That he cannot buy more than that, or less than that?

A It is a name-getting device to get a person to for a small amount, by telephone.





Q At any rate, the offer made by this literature was only one hundred thousand shares per customer.

A That is what it says here (indicating).

Q At 35 cents a share.

A As we know, it is nothing but a name-getting device --

Q Yes, we know that, but, after all, you have to look at this document to see whether there is anything wrong with it.

A I was going on to explain that the broker would not admit that it was a name-getting device; he would say he wants to get a lot of shareholders in at a low price, and if things develop successfully, then these shareholders will be given a special offer as a privilege as shareholders. That is the legitimate explanation they put on it, but everyone on Bay Street knows that is not a fact.

Q Supposing it is a device to get people to become shareholders, and they become shareholders, and some literature goes out; do we not have to deal with what appears on the face of the literature first?

So far what you have read might be what they call "puffing", as we used to say; but people are entitled to put their best foot forward when they sell,



but is there anything in ~~the~~ there which is misrepresentation?

A I will come to that, Mr. Chairman.

Q All right, perhaps I should not have interrupted.

A This goes on.

"Specifically, the advertising material distributed by Allison represents this stock as follows:

Because all of Captewell's holdings are in the 'proven Lloydminster oil field', they 'must be considered in terms of an asset with great potentialities';

That the holdings of Capewell in the 'Red Pheasant Reservation' are 'in the heart of the big company activity'; and in an 'extremely favourable location for the discovery of oil';

That because of the location of these holdings, a purchase of Capewell stock is a (profit opportunity' that is 'made to order', that is to say, that wells on these holdin\_gs will produce oil of the type and in the quantity that will





result in huge financial profits to holders of this stock;

That this stock is being sold to clients of Allison at 35¢ a share for the purpose of raising funds 'To finance the development of the Capewell oil interests', that is to say, that substantially all money invested at 35¢ per will go into the treasury of Capewell for its use in developing its holdings;

That Capewell's present drilling activities will provide 'news\*\*\*on day-to-day basis' that 'could have an important bearing on quotations of the Corporation's securities'.

The evidence before me, submitted by the United States Securities and Exchange Commission, clearly shows that the foregoing representations are false and fraudulent. From reports received from the Commission in this and in other cases it is shown that the Lloydminster area in Alberta and in Saskatchewan, Canada, is an oil producing area. With respect to this



area, however, the following quotation is taken from a letter addressed to representatives of the Securities and Exchange Commission by an authorized official of the Alberta Board of Public Utility Commissioners;"

Q Then their whole case, according to the last paragraph which you read, is based upon the opinion of some official as to the future of the Lloydminster deal?

A That is as I understand it.

Q They say that this literature, in view of that statement, gave two glowing a picture of the prospects of the Lloydminster field?

A Yes.

Q Does it go any further than that? Would you say there is any other aspect of that literature which constitutes a misrepresentation of fact?

A Not in my opinion.

BY MR. JOLLIFFE:

Q Mr. Lennox, in your evidence previously--

A Could I just have a chance to express myself? I say it is not a misrepresentation of fact, but I have already criticized the fact of building up an





area that relates to areas which have nothing to do with the area in question.

Q And which is entirely different in character? In your evidence you pointed out that the Lloydminster is entirely different in character. You and I know that the Lloydminster area is an old area, and it is a part of the Leduc area?

A I am not suggesting it is comparable to the Leduc area.

Q The whole point of the representations contained there was that it was just an attempt to identify the Lloydminster as a proven oil well, with a field like the Leduc, when the two are entirely different?

THE CHAIRMAN: It is a matter of degree. Does it mean to say it is a proven area?

MR. JOLLIFFE: It is correct to say it is a proven area, but it <sup>is</sup> entirely different from the Leduc area.

THE CHAIRMAN: And it has just as much potential possibilities?

MR. JOLLIFFE: No, quite the contrary. It has been proven that it has not the same possibilities.

THE WITNESS: I do not know whether it is proven



or not, because they have only gone down to the first strata, and they are exploring down to the third strata in Saskatchewan.

MR. JOLLIFFE: They have had ten years to prove that.

THE CHAIRMAN: Ten years is a short time to prove any area.

THE WITNESS: I have talked to Mr. Nickle Senior, the father of the eminent columnist on oil, and I am not saying it is final, but he has indicated they hope to find oil at a depth.

BY MR. JOLLIFFE:

Q All right. Put the evidence aside, and let us get to the point. There has been an oil boom in the last five years in Western Canada?

A Yes.

Q Would it be correct to say that the Lloydminster field has any part in that boom?

A I think the Husby Oil Company has done a great deal of development work. It has participated in the boom, and it has confined its efforts to the Lloydminster and similar fields.



Q Now, the Husby Company is active in other parts of Saskatchewan, apart from the Lloydminster area?

A So is this company, the Red Pheasant.

Q If you were discussing this matter with a visitor from England, or Iran, or the United States, and discussed the Western Canadian oil boom in the last five years, would you be referring to the Lloydminster area?

A No.

Q That is the whole point. That is what these representations sought to convey, quite dishonestly; that is the impression which the Alberta public official sought to correct in this statement to the S. E. C. The boom has been mainly in Alberta?

A Definitely.

Q And not at Lloydminster?

A I am attempting to clear up a certain situation. I was not commenting on the merits of the order, in any way, shape or form.

BY THE CHAIRMAN:

Q That is true, but I think it is of interest to quite a number of us to keep to the basis of the merits of that order, and examine the sort of statements made to the public, to see whether that might, in the





view of reasonable men, be considered fraudulent or a misleading offer, or not, in view of all the circumstances?

BY MR. JOLLIFFE:

Q Mr. Lennox, is it not a fact that as far back as 1949, your Commission found it necessary to distinguish between oil promotions in the Lloydminster area and in other areas? You gave evidence about that. You had to draw the line?

A Yes. I think most of my evidence was directed to the question that the drilling of a well in the Lloydminster area or in the Saskatchewan area was relatively cheap, and that the minute they brought in a well they announced they had a successful well, and the vendors interests used to dispose of their interests, there and then, and would lose interest in the financing of the treasury.

(Page 2780 follows)



MR. JANES: Is there not another point involved there in that picture, in a very important way, that there has been almost no attempt to develop the oil industry in Saskatchewan, because of the attitude of the government,<sup>and</sup> to a great extent, that they would not allow free enterprise to operate?

MR. JOLLIFFE: No, that is not correct. If you read last night's paper to the contrary.

One peculiar thing about the Lloydminster field, is that it is on the border. The provincial boundary line runs down the street, and some of the wells are on one side of the border, and some on the other. In Mr. Lennox' administration, he found it necessary to impose a different rule with respect to the Lloydminster property, from the rule in respect to the other because they differ in character.

THE CHAIRMAN: This statement in this literature -- the part which might be open to criticism -- is to throw in the Lloydminster field with the other fields, and give the impression that they are all of the same character and were proven to a similiar extent, whereas, as a matter of fact, I suppose the history is quite different, is it not, in regard to the Lloydminster field as compared with the Leduc and other fields?



THE WITNESS: Oh yes.

BY THE CHAIRMAN:

Q. In order to sell shares in the Lloydminster property, it is not fair to the public to describe it as being one of the fields such as the Leduc and the other fields which have been proven to a much greater extent, and much more successfully, up to the time that statement was made? That would be the objection to that statement?

A It boils down to this; that the Lloydminster oil is a crude oil, and a much cheaper product. It is one of the old fields.

Q If a full, complete and true disclosure had been made, it would not have been thrown in quite so loosely with the Leduc and the other fields?

BY MR. JOLLIFFE:

Q. Mr. Lennox, it would have been quite proper and legitimate, would it not, for the broker-dealers to point out that frequently it is cheaper and easier to bring in production in the Lloydminster area, but after you have done so, the opportunities for profit are not as great as in the Leduc field.

A That is a true picture.





BY THE CHAIRMAN:

Q. That would be based on experience up to the time the literature was issued, but, as Mr. Lennox has pointed out, it is all subject to subsequent developments, which cannot be predicted.

A I think I expressed my opinion on the matter in my earlier evidence, when I said that our literature is often meaningless, but not necessarily fraudulent. I do not approve of that approach to a sales campaign but I doubt if you would get a conviction in a court of law for fraud.

BY MR. JOLLIFFE:

Q. May I ask whether that literature<sup>was</sup> used by a Toronto broker-dealer?

A By a broker-dealer.

Q Is he still registered or has he got into trouble?

A He is still registered, but he sent me a letter voluntarily saying that he was restraining from dealing through the mails outside of Ontario.

Q But he is still free to send out that literature in Ontario? That would not violate his commitment to you?

A No. This goes back quite a long time, Mr. Jolliffe



BY THE CHAIRMAN:

Q. How long ago was this?

A These orders were dated in March, 1950. I do not know when the investigation was made.

Q That is, the investigation in the United States?

A Yes.

Q It was made sometime before that?

A I would have made a complete search in this matter if I had known I was going to refer to it, but I will have to go through all the fraud orders to get that information.

THE CHAIRMAN: I think it is quite important to have a few examples. It is very interesting, and throws a lot of light on this whole problem.

BY MR. JOLLIFFE:

Q. Before we leave that, Mr. Lennox, do you think it objectionable in any way for the S.E.C. or the United States postal officials, or, for that matter, the Canadian postal officials, or investigators, to ask a provincial securities Commissioner what the facts are with reference to the oil fields, or a copper prospect as far as the facts are available?

A I am not suggesting for one moment I am offering any criticism. I just offer that to dove-tail into my



statement of yesterday. I do not think it is one of my functions to offer any criticism.

BY THE CHAIRMAN:

Q. I would think from what you have read, that the official perhaps went further than might have been wise in giving his opinion as to the future of the Lloydminster field.

If he had confined himself to facts known as to the history of the Lloydminster field, and the state of the development it had reached at the time this literature was published, compared with the state of development in the other fields, that would have been all right. But I do not know that you can criticize an official for giving his opinion if it is asked for. It is probably an honest opinion.

MR. JOLLIFFE: I agree with the Chairman that nobody has any right to make a statement about the future. Nobody knows what may be found or proven in the future. The difficulty with that literature is it does not talk about the future; it relies upon statements as to what has happened in the past, and what is planned now, and I would think that if some foreign official or some federal official asked Mr. Lennox what the situation is with regard to oil in





Bruce County, it would be quite proper for Mr. Lennox to say, "There may be some people drilling in Bruce County, but it is far away from the Leduc".

THE WITNESS: I would refer that to the Department of Mines.

THE CHAIRMAN: The objection to that sort of literature is that it is very vague. On the other hand, it gives to an ordinary person, a very clear idea -- it gives a very optimistic picture which perhaps goes beyond the facts which the issuer knows. And it makes a great many statements of fact with a lot of statements of what will happen in the future without very much qualification. Once a man talks about the future, it is hard to get him on a fraud.

---Whereupon the Chairman retired, and the gavel was assumed by Acting Chairman Villeneuve.

BY MR. JOLLIFFE:

Q. I suppose, as a matter of fact, the Department of Mines get a good many enquiries from Canada and abroad?

A Oh, undoubtedly.

Q About Ontario?

A Yes.

Q At least, that is my understanding.



A I am sure they do.

Q They have done a great deal of survey work and published innumeral reports which are frequently requested by interested people, and I understand they get them.

A I have no doubt they do.

BY MR. HOUGH:

Q. Do you, yourself, receive many enquiries along that line?

A Oh yes. The trend of the enquiries we get from outside jurisdictions, relate largely to the matter of merit, and "is the dealer a qualified trader,".

I got a telephone call from a woman in a western state asking me if so-and-so was a good buy. I suppose it cost her \$10. to ask that question.

BY MR. JOLLIFFE:

Q. Of course, that is an extreme case, of a person who quite wrongly thought any government official is in a position to give that advice, but it seems to me that is in a very different category from an enquiry as to what the facts are.

A Mr. Jolliffe, I can only clear that matter by saying I am not offering any comment whatsoever about whether the official in question should have given that



opinion or not.

Q I would gather from what you say that you would not give a statement of that kind yourself?

A I think one of the worst things that can happen to a securities commission -- our Securities Commission -- is to retard the development, and I think one of the best ways to retard development is when you get a lawyer up in the Securities Commission who thinks he knows something about mining.

Q I think the Committee would agree with that, but there are different ways of retarding development, and it is quite conceivable that a certain method of promotion might also retard development, or discourage substantial capital from coming in. Is that not possible?

A I <sup>have</sup>/realized that for three years, but as I pointed out the other day, the Commission has acted on its own motion in a majority of these investigations to try and stamp out and discourage this high-pressure mailing and telephoning.

Q May I turn to something else, Mr. Lennox, for a moment? We heard a good deal at an earlier stage about the delay and expense involved in getting registered with the S. E. C. Mr. McEntire, in his letter, said that the average time required down there is about 21 days---20.9 days.





I was wondering if you could give us any figures about the time required to get registration with the Ontario Securities Commission?

A I would think, if a lawyer is reasonably conversant with the work he was doing, and the company employed the services of a competent engineer, and so forth, that ten days should be enough.

I think when Mr. McEntire referred to "20 days," he was referring to 20 days' delay after the issue is accepted for filing. There is a 20-day-period delay as a matter of routine, unless the Commission in its discretion abridges that time.

Q No, I am sorry; that is not what Mr. McEntire said. At page 12 of his letter, he said:

"Statistics compiled as of  
June 30th, 1951 show that the average  
number of days from initial filing  
to effectiveness for the 491  
registration statements that became  
effective-----"

and he has underlined the words "from initial filing to effectiveness."

"-----during the preceding year was  
20.9 days. This same average applies  
to all Canadian industrial issues filed



with us."

A That is the effective date. The average is 20 days. But if you read on, it will state that after the effective date there is a 20-day period of waiting, but the Commission can abridge that 20 days' time, if it sees fit.

Q And he says on page 13:

"The average waiting period for all of the issues, after correction, was 6.5 days, and the median 5 days, as against the 20 days provided by law."

The law allows a 20-day waiting period, and apparently the Commission has the power to reduce that period if they see fit?

A Yes. I found it rather difficult to be found confronted by evidence when the witness--- if you call him a witness---is not here to answer the questions.

I would like in that connection to point out a misconception, as I see it, where Mr. McEntire said that the flotation costs overall were one-half of 1% of the total issued capital.

Naturally, Mr. McEntire was not trying to



mislead anyone, but I think if he was here to give evidence, he would say that including issues proved under regulation "A" which are qualified or accepted, there is virtually no cost whatsoever.

I have here (indicating) a record of the S. E. C. covering the first quarter of 1950, which gives an explanation of that basis of the percentage on the gross profits. Out of 122, there are five or six at one-half of 1% or less; there are 15 over 2%, and the highest is 5.4%, so on the face of these figures I think it would be very difficult to conceive of the percentage being reduced to one-half of 1%.

The record is there, if anybody is interested in looking at it.

Now, you were asking me about the time required to qualify with the S. E. C., when I am not conversant with the matter. The only evidence I can give is hearsay evidence, with the possible exception that the legal advisor of the company gave evidence under oath, that they applied to the S. E. C. last July ---

Q I am wondering if that is rather like some of the hearsay evidence I have received, that it takes several months to qualify an issue with you. I did not swallow that. That is why I am





asking you what your average is?

A I see your point, and it is well taken, Mr. Jolliffe. But, do you remember I suggested that you call Mr. Gordon Watson---

Q That is one case. But what I am interested in at the moment is what the average is in Ontario?

A I think if the solicitor is conversant with the requirements of the Commission, the average is 10 days.

Q Would that be the average for applications generally?

A I have not made an exact study of it. There are a few cases coming to my notice where the registration fee has been forfeited because they have not met the requirements in the necessary time.

Q Then it comes to this; if they fail to meet your requirements, or many amendments are required, then delay is inevitable?

A Delay is inevitable, if they do not meet our requirements.

Q Or if there are a number of amendments which your Commission suggests or insists upon?

A There is another factor, as far as our office is concerned. Our form of legislation is comparatively new; it has only been in force a little over three



years, and the situation will improve as the profession become more conversant with the requirements.

Q That is, the legal profession?

A Yes.

Q If the application were in good order, you say there is no reason why it should not be processed in ten days or less?

A No reason whatsoever.

Q There is another matter in connection with the procedure of your Commission which I would like to clear up, and you will appreciate I am interested in it both as a lawyer and as a citizen, and that is your practise of the hearings.

Is it correct that the evidence on which you act is not always fully disclosed to the person charged?

A You mean the hearings before the full Commission?

Q Yes?

A They are furnished with the brief. We prepare a brief and they are furnished with the brief.

Q The solicitor for the man charged is provided with a brief?

A They are not charged. The solicitor for



the applicants for registration or the appellant  
---whichever you wish to call him--

Q He is provided with a brief?

A Yes, which sets out the particulars of the case against him. It shows all the reports and materials which the Commission is going to consider.

Q Is his solicitor permitted to see all the evidence in the possession of your Commission?

A Yes. If you could refer to any specific case, it would help me.

Q No, I am asking you what the practise is.

A I do not know of any case where any evidence has been withheld from an applicant.

Q Have there been any cases of that during your administration, when a part of the evidence consisted of reports from the S. E. C. or the F. B. I. or Scotland Yard?

A No doubt there have been.

Q There have been?

A Yes.

Q I assume that they would be cases in which the applicant had resided abroad at some time or other?

A Yes, most likely.





Q You obtain certain information from Washington?

A Yes.

Q Which would be taken into account in considering the application?

A Yes.

Q Well, I am not stating at the moment what is the right procedure, but are reports of that kind accessible to the applicant?

A They might not be in the brief, for several reasons. They might not be in the brief because the brief is more or less in the open file, and we do not want even the girls on the staff---it is no concern of theirs.

But a document would be read to him or be handed across to him, or his solicitor, during the hearing, if he wants to see it.

Q Would that include a report from the F. B. I. or Scotland Yard forwarded to you by the S. E. C.?

A Yes.

Q He would be permitted to see that?

A Yes.

Q Then do I understand you to say that when



the applicant is before you, or the appellant, that no part of the case against him in the possession of the Commission is withheld from him?

A        That is right.

Q        He is given the opportunity of seeing all the evidence against him?    Is that correct?

A        I can only say---if you have any information, I can conceive of one instance that might prompt any person to give you that information--

Q        No, I am just asking a question.

A        I am trying to give the information so that later on I will not be accused of trying to mislead your Committee.

          We got a confidential letter from a former employer of an applicant for registration, and we had to accept it on the basis that it was confidential.    This chap who came up for registration, came up before the full Commission.    We did not use the letter against him, but when the solicitor conducting the matter for the Commission asked him certain questions, he said: "Oh, my former employer has been squealing on me."



BY MR. GRUMMETT:

Q A former employer or employee?

A Employer.

BY MR. JOLLIFFE:

Q I do not know anything about that case.

A I have sat on about 230 hearings since 1946, and unless I am given some indication of a matter, it is pretty hard to search my memory seeing if there is any possible ground for asking that question.

Q There is every ground for asking that question, Mr. Lennox. Do not read into my questions implied criticism or implied charges.

A I am sorry I phrased it that way. If there is any case that is remotely connected with your question--

Q No, I want you to understand it very clearly. Even if I have never discussed the question with anybody, I would be interested to know what your procedure is. I am interested in knowing what the procedure is before any administrative tribunal, that is to say, whether any person against whom a case is before you is enabled to see all the evidence against him?

A I can only answer to the best of my ability,





but I would say "Yes," definitely they are.

I can give you an illustration. A lawyer came up to see me. I thought it was improper, because it went before the full Commission, but he said: "What is the chance of so-and-so getting a registration?" and I said: "I do not know, because we have a three-man Commission, and I mean a three-man Commission." And I said: "It always has been."

I said: "You are a very good lawyer. I have heard your name mentioned for the bench on occasion, so I suggest you get your client to sign an authority, authorizing the Commission to disclose his entire record to you, all the material, the complete file, and then you be the judge."

That shows my attitude in the matter, and that was the end of that appeal. He was a good judge.

-- Thereupon the Acting Chairman relinquished the gavel, which was re-assumed by the Chairman.

BY MR. JOLLIFFE:

Q I think you appreciate now the reason I asked that question. It was not based on any information which was given to me, but like many other lawyers I still feel that no matter how great a scoundrel a man may be, he is entitled to know all



the matters which are against him.

A        If you give me a chance, Mr. Jolliffe, by appearing before the Commission on an appeal, I will be glad to let you know how we are conducting them.

THE CHAIRMAN: We will adjourn for five minutes.

-- Whereupon a short recess was had.

-- Upon resuming:

THE CHAIRMAN: Gentlemen, we will proceed.

BY MR. JOLLIFFE:

Q        Now, Mr. Lennox, I have some more questions, but before I take them up, there are one or two things I would like to say to you.

I suppose that other members of this Committee have had similar experiences to my own. The securities business seems to be a business in which a great many people make it their business to send messages and communicate information---or misinformation---of various kinds, and, like others, I have had a good many, anonymous and otherwise.



I must say that some of those who have communicated directly or indirectly with me seem to be under the impression that my objective, and perhaps the objectives of others, in questioning you is to discredit yourself and your administration. Now, nothing could be farther from the truth.

THE CHAIRMAN: I would say that is quite apparent, Mr. Jolliffe, from the questions you have asked. I think we all agree you are here to get at the facts of the situation, and I do not think that anybody has shown any indication otherwise.

MR. JOLLIFFE: That is the point. We want to get at the facts, and while some of my later questions may be perhaps regarded as searching questions, nevertheless, that is a fact.

Secondly, some of them seem to be under the impression that the object of this questioning, or the ultimate object, is to discredit the Government of Ontario. Now, that also happens to be correct--- I mean incorrect.

MR. HOUCK: Well, let us get that straight. Which is it?





MR. JOLLIFFE: It happens to be incorrect, but if in the result, the Government of Ontario should be discredited in any way, then the government itself would be responsible. But that is not the objective of this enquiry at all, as I have tried to make clear from the outset.

We will allow public opinion in due course to take care of these matters.

The real objective is to get at the facts and bring out into the light of day matters which have been obscured, either by exaggeration, deliberate misrepresentation, or by ignorance.

There is one further comment I want to make about some of these billets-doux, which I have received.

It has been suggested to me in some very ingenious ways that there are matters about which it would be well not to ask questions; that there are some matters in connection with this business which it is dangerous to discuss.

My response to that type of suggestion is that the more suggestions the better. I might say, for the benefit of those who inspired those suggestions, that they have only succeeded in arousing



greater interest on my part.

I want to ask you one or two more questions about the procedure and practise of the Commission itself.

Do I understand that you now publish in the bulletins all your decisions, or just some of them?

A We publish all the decisions of the full Commission, where a person is deprived of registration on the footing that if we deprive a person of what he deems to be his rights, we should explain why we do it.

We very rarely publish a decision when the so-called "appeal is allowed, because we have granted the citizen his request. In rare cases we do publish a decision when an appeal is allowed, as sort of a matter of record, and to impress upon the individual that he is more or less on his good behaviour.

Q Well, I am not sure that I understand you clearly. In the bulletins to date, there are decisions relating to suspensions by yourself. Are they all in there, or just some of them?

A No, some of them. Where the Chairman cancels a broker's registration for cause, the matter



is fairly involved, and we think it would be of some benefit to the industry if I gave written reasons showing how I arrived at my decisions.

But in obvious cases such as occurred on Monday night, where we found a broker-dealer employing an unregistered salesman, the thing speaks for itself. There is no cause to write a reason.

Q You have also published some decisions on cases before the full Commission. Have they all been published?

A We publish every decision issued by the full Commission, and have given reasons in every case where we have deprived a man of the right to trade. We have given reasons to show why we so deprived him.

Q Does that apply to broker-dealers and salesmen?

A It applies to broker-dealers and salesmen, brokers, security issuers, and everybody else.

Q There was one thing which you said on another occasion which disturbs me a little. It appears at page 2012 of the evidence---beginning on the previous page. In answer to some questions by the Chairman, at the foot of page 2011, you said:





"We discovered this glaring mark-up in a case reported in the February bulletin, of 1950. That is one which is long out of print so many people wanted it. There was a mark-up of .10¢ apparently for nothing except they paid the transfer tax of the Dominion and Ontario, amounting to seven-tenths of one cent, if my memory serves me right."

THE WITNESS: That is wrong. It should be less than that. Seven-tenths is too high.

Q And you went on to say:

"That case was so glaring that we did not dare publish the details of it in the bulletin because that goes to outside jurisdictions, so in order to demonstrate our findings in case of an appeal to a judge of the Supreme Court, we have prepared a schedule to our decision, but we did not publish the schedule for obvious reasons."

I think in fairness to yourself you should elaborate on that, because it gives me the impression



that there are some aspects of the administration of the law relating to securities here which are so bad that one does not want to have them get abroad. Surely it is not as bad as all that, Mr. Lennox?

A I appreciate your concern, Mr. Jolliffe. The decision is published. It is Junior Golds. We talked about the excessive mark-up and "glaring mark-up" and everything else.

We had the accountant prepare a schedule ---an elaborate schedule, for which I can send--- so there would be something before the court in the case of an appeal.

I didn't think it was advisable to broadcast that throughout other jurisdictions, and possibly discredit the issuing company, which is not involved in the matter in any way, shape or form, when the property had considerable merit.

As a matter of fact, the properties have been split up into two companies now, and they are both listed on the Toronto Stock Exchange. If I thought there was anything sinister about it, I would not have volunteered the evidence.

Q I can appreciate that, but what is bothering me is this; I would like to think that



everything and ~~anything~~ done by the Province of Ontario would be of such a nature that we would not be afraid to have it publicized in any corner of the world?

A I would agree with you if the only consideration was the broker-dealer involved, but you have to consider the issuing company, which was in no sense involved in the financing of that company.

The same aspect has been discussed from one angle and another here, that the cancellation of a broker-dealer's registration adversely affects the issuing company, and it does no doubt, to a degree.

Q I can see your difficulty--

BY THE CHAIRMAN:

Q I think you also told us yesterday, Mr. Lennox, that this matter was at one time taken into consideration in some of the deliberations of the Commission, possibly before your time?

A No. I said to Mr. Houck that I think it was the worst mistake I made at the outset.

Q That you did take into consideration the effect upon the company of the cancellation of a broker-dealer's license?

A Yes.



Q And that consideration was soon abandoned?

A I saw I had made a mistake.

Q It was apparently unsound?

A It was apparently unsound . I am the first to admit it now.

Q On the other hand, the publication of some information in connection with some of these cases might also affect the company and the shareholders of the company unfavourably, and that has been a factor in your decision, perhaps, not to publish some of that information in some of those reports? Is that it? Whether that is right or wrong, that is the reason for your reducing the material in your reports to the extent that you did, in some of these cases?

A I think my good faith in the matter is demonstrated in the fact that I volunteered the information, the first day I was a witness.

Q There is no question about that. It is just a question of the soundness or the propriety of the policy.

No doubt there are many, many incidents which have occurred, upon which action has been taken by you, as you have told us yourself, which later you





thought perhaps were not quite right and you changed your viewpoint and the policy in respect to several of those things?

A I might take a different view now. At that time there was another consideration. I was trying to get the Broker-Dealers on their feet, and to get them to realize their responsibility.

BY MR. JOLLIFFE:

Q Does it not come to this, Mr. Lennox, that as long as there are a group of people in the broker-dealers business who require discipline from time to time, certainly in a sense which does not appear to be necessary in the case of the investment dealers or the members of the Stock Exchange ---as long as that is the case, an issuing company of a property which may have great merit always runs the risk of being given a black eye by reason of the sales methods of the broker-dealers, which sales methods, after all, have nothing whatever to do with the merits of the property?

A No, not necessarily. Sometimes they go together.

Q You see, Mr. Lennox, that is one of the things about which I am very much concerned, that some of



the most meritorious properties may get a black eye because of the activity of certain people here in Toronto, who are not miners nor prospectors, but are engaged in the business of marketing securities?

A I am equally concerned. Part of the property now is listed on the stock exchange, and the stock is selling at around \$1.50, I think.

Q In that case, they recovered from the setback caused when you disqualified --

A After a very rough ride.

Q I imagine it would be tough after an experience like that. I can well imagine that.

A Yes.

BY MR. HOUCK:

Q. Right along this line, referring back to the mailings again; where do the men obtain the mailings list, what we call the "sucker list" about which we have been hearing? We have also been hearing it said that ministers and doctors are suckers for these mailing lists.

MR. DOWNER: Oh, I do not know about that.

THE CHAIRMAN: The lawyers have lost more



money in these speculations than all the other professions combined.

MR. JOLLIFFE: They will take shares for their fees.

THE WITNESS: There is a concern in New York City which sells these lists. There is another one in Chicago. These brokers pay substantial sums for these lists.

BY MR. HOUCK:

Q. Do these lists include the Canadians?

A They are mostly American lists. I saw a circular -- since this investigation started, I have tried to locate this circular but I have mislaid it somewhere, where this New York concern offered a list of shareholders of different companies -- well known Canadian companies -- which, of course, is against our law, but operating from New York State, they made this offer. How they get them, I do not know. I am sure I have not destroyed the circular, but I just cannot put my hands on it.

BY MR. JOLLIFFE:

Q. I do not understand that. I am sorry. What was the nature of the circular?

A A well-known firm in New York selling lists of





names that we have described here as "sucker lists". They made an offer to some firm in Toronto, offering to sell them a list of shareholders of "A" companies, "B" companies, "C" companies and "D" companies, all the way down the line.

BY THE CHAIRMAN:

Q. I suppose one type of the so-called "sucker list" is a list of shareholders in existing companies?

A Yes.

Q And there must be other lists which go far beyond that.

MR. JOLLIFFE: I suppose they could be obtained legitimately.

THE WITNESS: I suppose so.

THE CHAIRMAN: My recollection is that the Provincial Secretary now does not give out lists of shareholders indiscriminately. They have been used for different purposes, and there have been complaints, and I think there is a policy in that department which limits the handing out of lists indiscriminately.

MR. JOLLIFFE: I am sure there is. Is it not the law now, that the shareholders, unless some reason to the contrary can be established by the company, are entitled to see the list of shareholders.



A        There have been some battles about that, too.

THE CHAIRMAN:    Yes.

BY MR. JOLLIFFE:

Q.    Have you any knowledge of the alleged list referred to in Maclean's Magazine of all the widows in the United States with more than \$50,000.?

A        No, I have no particular knowledge of that, except I think this firm is engaged in making a specialty of that. I think it is their main business.

BY MR. HOUCK:

Q.    Is there anybody in Ontario selling such lists?

A        Not to my knowledge.

BY MR. JOLLIFFE:

Q.. Did I understand you to say in some other part of your evidence, Mr. Lennox, that you had issued a bulletin or circular to the members of the B.D.A. containing information which you preferred not to publish in the bulletin?

A        I sent a letter to the B.D.A. and suggested they publish it in their bulletins, for the information of their members. I have the letter here. They did publish it in their bulletin. I think that is a question of domestic administration. That (indicating)



is the letter I sent.

Q I am not suggesting there is anything unreasonable about the letter. Perhaps I should read the letter to the Committee. There is no reason why it should not be read.

THE WITNESS: It has already been read, and is in the evidence.

MR. JOLLIFFE: It is marked "confidential". If it has already been read, I will not proceed with it.

Now, on a small point; can you tell me this? With reference to Section 52 of the Act, Sub-section 2(a) -- this is the exemption where there is a call by telephone to the residence of a close personal friend, business associate, or customer. The Section reads as follows:

"(i) of a close personal friend, a business associate or a customer with whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities, or

(ii) of a person who has requested in writing that information respecting a specific security be furnished him".



That is limited to that particular security?

If a broker-dealer qualifies a given issue with you, and receives an enquiry about that issue, and then quite properly communicates with the enquirer and makes a sale which might involve a number of telephone calls, and perhaps some correspondence, and then the following month he qualifies another issue; do you take the position that the broker-dealer is barred from calling on the telephone the individual or is he within his rights in communicating with him again on the strength of the fact that he has been doing business with him on the telephone during the last two or three months?

A No. I would say that he would have to have a further request for that second issue, because we would never consider a person is a customer because he got into one issue, even at successive times.

We have not had any trouble along that line, but I would have no hesitation in saying the broker was in violation of the provisions of the Act.

Q In other words, you would not accept even a dozen telephone calls or considerable correspondence in connection with another issue, as putting that person in the category of a client?

A No. I think, Mr. Jolliffe, it could be reduced to this simple proposition; that a series of telephone





calls and further purchases was just a continuing transaction. That is the stand I would take.

Q With reference to a specific security?

A Yes.

Q Now, going back again to mailing. You said you would be willing to show the Committee some of the literature which has been going out, but you would prefer not to make the selection yourself.

A I thought it would be better, and have greater value, if the Committee made the selection, just named the broker, or named the deal, and I would produce the documents.

Q I do not want to monopolize the choice, by any means, but I make this suggestion to you; in this Exhibit No. 125, the St. Louis Better Business Bureau list, there are on the back pages, a list of post office fraud orders against Toronto stock dealers. On that list, there are a great many broker-dealers named who have been disqualified by you?

A Yes.

Q I do not think we need to worry much about them.

A No.

Q You took action in those cases?

A Yes.



Q I suggest you let us see the literature in respect to some of the others in respect to which sales were solicited, apparently in the United States, by broker-dealers who are still registered in Ontario.

A Yes.

Q You see the point?

A Yes.

Q It may not be practicable to get them all, but there are a number who are still registered, and the stock is very recent, I would gather -- some of them. Would you prefer me to name some of them?

A I think it would carry more weight.

Q Well, the first on the list -- and in this case the broker-dealer is not marked off as having been disqualified although he may have been. Leader Securities Ltd.

A They are still active.

Q Now, is Allison of Greenwood Securities still registered?

A Yes.

Q The literature relates to Capewell Petroleum Corpn. Ltd.

A I have the literature under the broker's name.

Q I would just give you the brokers' names then. I will not have to mention the company.



The next is Brentwood Securities. Still registered?

A No, I don't think so. I think that is Glass.

Q I think so, yes.

A Yes.

Q Bryans & Co.

A Yes.

Q Where I am a little at a loss, I have the April list of members of the Broker-Dealers', and probably some have been disqualified so I do not know who still has not.

The next is George F. Caldough & Co.; still registered?

A Yes, they are still registered.

Q Cardigan Securities Ltd.?

A I think George F. Caldough is now incorporated.

Q Cardigan Securities; still registered.

A Yes.

Q What happened to Gordon, Daley, apart from changing the name?

A They just incorporated as Gordon, Daley Co. Ltd.

Q They are still registered?

A Yes.

Q Then there is the name or names of the Cornell firm.

A Cornell & Seaford Ltd.





Q It is Cornell, Seaford Ltd.?

A Yes.

Q And J. D. Cullingham & Co.?

A Yes.

Q Wesley T. Davidson & Co.?

A Yes.

Q Wm. A. Deering?

A Yes.

Q J. B. Dow & Co.?

A You have a sample of his literature, which I handed to you yesterday.

Q That is the Maidstone Oils?

A No, the Cardinal.

Q It does not happen to be mentioned here.

Perhaps you can dispense with that.

The next is the Forest Financial Corp'n. Ltd .  
That is not a broker-dealer. It is listed as "market news and views". It sounds like a "dope sheet".

A The Forest Financial Corp'n. is a continuation of E. F. Bryant. That is an incorporated name.

Q The changes of names have me a little confused.

A Sometimes they confuse me, too, Mr. Jolliffe.

Q Then H. H. Gillespie & Co.?

A He has resigned.

Q May I ask whether Indigo was a securities



issuer, registered?

A No. Indigo has been sold by Deering, Wm. Deering. You have that down here (indicating).

Q I have, yes, but it happened that apparently there is an order of some kind pending against the company itself. That is why I asked whether it was ever registered as a securities issuer in its own right.

A I do not think so.

Q If it was, the literature would be filed with you, I assume?

A No.

Q Do not securities issuers have to file literature with you?

A No.

Q They do not have to file with the B.D.A. either?

A No. The securities issuers send out very little literature and very rarely make offerings in the United States. I think that one or two securities issuers which you will see there (indicating) some beverage company --

Q Does that mean that there is no official record on file of the literature issued by the securities issuers?

A No, only when we get a complaint on it.

Q Do you not think it would be well to have their



material on file? I gather from what you have said that the B.D.A. and the Commission have all the broker-dealers' literature and have the investment counsellors' literature?

A Yes.

Q If it can be called "literature"?

A Yes.

Q Is the security issuer the only exception?

A If you want to put it that way. We do not require the broker-dealers to file their literature with us for the purpose of perusing the literature, or having it on file. We do it to guard them against sending out literature which had not been perused by the B.D.A. We had the B.D.A. forward copies of the perused literature <sup>and</sup> when the literature comes in, we check it with the perused literature to see if any unauthorized literature has been mailed. That is how the thing originated, and I originated it.

Q The result would seem to be we do not have access to literature sent out by the securities issuers, and I was curious about what they did send out.

A We think they send out pretty good literature, and if there is a complaint, it is usually a legitimate complaint. I think the securities issuer is in a little different category.



Consider the Copp's Beverages; they wanted to finance a company. There are a lot of little industrial companies who want to raise new financing and the I.D.A. would not touch them, and the broker-dealers would not touch them. So the only recourse if they want to raise \$50,000 or \$100,000 is to take out a securities issuer license. I hesitate to impose a lot of red tape on them unless there is some real cause for it, and I have not seen a cause yet.

Q Well, according to this list, there was a fraud order made on May 15th, 1950 with respect to the Indigo Consolidated Gold Mines, Ltd.

A Surely that is not an isolated case. Are there not fraud orders against loads of companies?

Q That is the first I encountered. I have gone through thirty names, eliminating those against whom you have taken action.

A I think I have the answer to that. Indigo made an offer to its shareholders at one period, which they are entitled to do, without having the issue qualified. I think that is the answer. They had shareholders in the United States, and they ended up with a fraud order.

Q I see Inland Securities Co. Still registered?

A Yes.





Q Well, I will not bother with fictitious orders.

THE CHAIRMAN: The fictitious name orders.

MR. JOLLIFFE: Yes, the fictitious name orders.  
They call them "fictitious orders".

Here is another one which might be a securities issuer, Maidstone Oils Ltd. Or is that another case where an offer was made to shareholders?

A I am certain they were never a securities issuer.

Q J. Cameron Mair, Ltd.?

A He is still registered.

Q E. M. McLean & Co.?

A Yes.

Q Palamino Gold Mines Ltd. -- no, that is a company.  
That is in the same family group as Indigo?

A Yes. And why there is a fraud order against them in the company name, I think is because they circularized their shareholders when Palamino was taken over by Indigo.

I do not want to labour the point, but anything connected with that group could get a fraud order against them very quickly.

Q And the next is Porrip & Co.?

A Yes.

BY THE CHAIRMAN:

Q. They were the faction apparently which was



complained against by the other faction.

A No, they are the bail jumpers.

MR. JOLLIFFE: DePalma.

Next I see is N. A. Weir & Co., which, I might interject, is not to be confused with the same name in the investment dealers group.

Then there is the A. N. Richmond & Co.

A They are no longer in business.

Q L. B. Scott & Co.?

A You will have a pretty big file down here, Mr. Jolliffe.

BY THE CHAIRMAN:

Q. What about Scott & Co.?

A I say there will be a pretty big file of literature down here.

BY MR. JOLLIFFE:

Q. V. H. Tadoll & Co.?

A Yes.

Q George Woodhams & Co.?

A Yes.

Q And Newton Wylie?

A Yes.

Q That is the lot?

A Yes.



Q In what month did you make your decision in the Norwitt case?

A February, I think.

Q I am returning to this for just a moment, Mr. Lennox, for this reason; when I questioned you on a previous occasion, you were not inclined to agree with my suggestion that different techniques are employed on the telephone in many sections of the United States, from those employed in Ontario. Do you recall that series of questions?

A Yes.

Q And I noticed you said in your decision in the Norwitt case, after analyzing the percentage of mailings, and the percentage of telephone calls made by that company to the United States, you said immediately after your analysis of the figure;

"These figures demonstrate a fact well known to the Commission that, as a matter of policy, high-pressure methods are used over the telephone outside the province where the chances of detection and subsequent proof of fraud are remote."

Unless I completely misunderstand that sentence, that strongly suggests to me that it is





a fact well known to your Commission, that a dealer of this kind can make it a policy to use high-pressure methods over the telephone in calls to the United States, knowing that the chances of detection and subsequent proof of fraud are remote, or much less than if he made the calls in Ontario? Is that not what that sentence means?

A My idea is they do not follow up Canadian leads. They use the telephone very sparingly in Ontario.

Q Then the sales technique, as far as the telephone is concerned, is different in Ontario from that employed in international calls;. is that right?

A No.. My idea, when I was giving the evidence, is they just do not telephone in Ontario.

Q Well, their reason for not telephoning in Ontario, would be, would it not, that if they said on the telephone inside Ontario, what they say to the United States, the chances of detection and exposure would be so great that they are not willing to take those chances?

A They would be much greater.

Q So they "pull their punches" as far as Ontario is concerned? Is that what happens? That is what I would deduce from what you have said in that connection.

A As I recall the evidence; I was being questioned by somebody else on the Committee and I said



that I did not think it was very practical for salesmen one minute to telephone to New York State, and the next minute, to telephone to Ontario, and change his whole sales campaign.

BY MR. DOWNER:

Q. His technique?

A Yes. I am glad you brought up that point, Mr. Jolliffe, because I think what probably happens is they sort of segregate their salesmen and a group of American salesmen are allotted to American sales, and it is well known they are very high-pressure salesmen, and the young Canadian amateurs, as it were, are going through the motions of telephoning within Ontario.

BY MR. JOLLIFFE:

Q. It sounds like discrimination against native talent.

A Our people are being deprived of the real artists.

Q Is it your impression that the type of men, these so-called "blower boys" do their phoning to the States?

A Yes.

Q And not to phones in Ontario?

A Well, that is just an impression which I have,



Mr. Jolliffe.

BY MR. DOWNER:

Q. Do I take it from your statement that this type of salesman who deals with the investors in the States are American born and trained?

A They are really topnotchers. I am taking the letter we had the other day about the "topnotch salesmen" who were Americans, who came across to this country in 1933, after they passed the United States Federal Securities laws.

BY MR. JOLLIFFE:

Q. Some of them like this country so well that they have tried to become Canadian citizens?

A Oh, Mr. Jolliffe, there are loads of fine, legitimate American people here.

Q I realize that. Nobody suggests that all Americans are undesirable.

MR. DOWNER: Not by any means.

THE WITNESS: I am just talking about these high-pressure houses. They cannot have any sympathy when they bring a fellow like Kauffman here in town.

BY MR. JOLLIFFE:

Q. In the case of Kauffman, there was no



attempt to register him as a salesman?

A No, because it would be useless. He was turned down by the Commission in 1940, and if our information is correct, he has a conviction for fraud against him in the United States.

Q At the same time, I take it from what you say, that certain houses import certain salesmen, some of whom to put it conservatively, are Americans?

A Yes.

Q And specialize in making calls to the United States?

A I have no actual facts to show that they specialize, but I think that is a quite reasonable deduction.

Q That is your impression?

A I think the Americans like to hear some person with their own accent.

Q And their own "line"?

A Yes.

Q It follows these men, apart from the floating outlaws like Kauffman, are registered salesmen?

A Yes.

Q And they continue to be registered salesmen until the Commission catches up with them?

A Yes.





Q And it is a fact, is it not, that to use this language again, "the chances of detection and subsequent proof of fraud are remote", if they make their calls across the border?

A Yes. I have said before, and I still say, that I cannot understand why people buy securities over the telephone.

Q I suppose it is a fact that it is only a very small minority who do.

A Yes, when you consider the population of the United States, it is a small percentage.

Q Of those invited to be victims, it is only a small percentage who "fall"?

A Yes. Even the returns from the mailings are extremely small; less than one percent, sometimes.

Q If the chances of detection and subsequent proof of fraud are remote, does it not follow that it is difficult to <sup>catch</sup> up with those operating that way?

A Extremely difficult.

Q When you do catch up with them, they lose their license?

A Yes.

Q But it is difficult to catch up with them?

A Very difficult.

Q Then, are not the cards stacked pretty heavily



against you, as long as these telephone calls are permitted to continue, and as long as the broker-dealers find it legal or desirable to employ men to make such calls? Your chance of detecting the fraudulent calls and acting thereon, are not too good, are they?

A It makes administration very difficult.

BY MR. JAMES:

Q. From where are these calls generally made?

A Right here in Toronto.

Q I mean from an office, or a public station, or where?

A They are made from an office. If we found they were made from a public station, we should cancel the broker's license and the salesman's license, because he is using an address which is not registered with the Commission.

BY MR. JOLLIFFE:

Q. And the same would be true, if he made them from his apartment or hotel room, or his home?

A This is something like the racing investigation. We made the best kind of a survey we could to find out the number of telephones installed in certain dealers' houses, thinking that they might be telephoning from their homes. We did not find



anything significant, in that case.

BY THE CHAIRMAN:

Q. You were not like the bookmakers in that respect?

A . No.

BY MR. JOLLIFFE:

Q. You did not find sixty telephones in one house?

A No.

Q Then it comes to this; the calls are made from broker-dealers' offices in down-town Toronto?

A Yes.

Q And to the best of your knowledge they are made from thirty or thirty-five offices?

A As far as the volume of telephoning, I do not think it would apply to thirty-five. I would say that the thirty-five include both the heavy mailings and telephonings, but the heavy telephonings are not as extensive as the heavy mailings.

Q But the heavy mailings are hardly worthwhile if they are not followed up by the telephone campaign?

A It is not as profitable a business, but if a dealer has something which has more indication of merit than another dealer, he probably would be able to get





as good results as the other dealer, without the extensive use of the telephone.

BY MR. JANES:

Q. How many telephones will there normally be in those offices?

A It depends on the number of salesmen. A telephone salesman usually has two phones. He puts a number in and while he is talking on that, he has another number coming through.

BY MR. JOLLIFFE:

Q. He places the calls with the long distance operator?

A Yes.

BY MR. JANES:

Q. How many would they have?

A If they have three salesmen, they have six telephones. If they have six salesmen, they have twelve telephones.

BY MR. JOLLIFFE:

Q. Has your Commission ever made any attempt to record some of these telephone conversations?

A How can we?

Q They can be recorded at the other end, quite legally.



A        You mean to send an investigator over to sit by the telephone?

Q        Yes.

THE CHAIRMAN: By whose telephone?

MR. JANES: How would they know where to sit?

BY MR. JOLLIFFE:

Q. There are two ways by which telephone conversations can be recorded. One is by putting a stenographer at the end of the line --

THE CHAIRMAN: On whose telephone?

MR. JOLLIFFE: The recipient of the call.

THE CHAIRMAN: How will you find out who the recipient of the call is? There are a large number of people scattered throughout the United States. Where would you go? When would you go? Would that not be difficult?

MR. JOLLIFFE: I would suspect if cash was actually sent in, it would be followed by a call.

One method would be to record the conversation with a stenographer on an extension. Then there is the recording by a sort of a dictaphone device, which I presume, if the situation is the same there as it is here, the warning signal would be given, that the



conversation was being recorded.

MR. JANES: You are suggesting they prepare a customer --

MR. JOLLIFFE: I was asking if that was ever attempted, so there would be a verbatim account of what was said. I think it would be very interesting to hear what was said.

THE WITNESS: Mr. Jolliffe, it would be very difficult to set the bait or the trap, as difficult as anything could be, because these mailings go out in volume, and the returns come in over a short period, if a person is going to reply.

It would be very hard to judge just where and when a telephone conversation is going to come through.

BY MR. JOLLIFFE:

Q. They usually come in the evening, do they not?

A Yes. The first thing a person subscribes through the mail for some stock, and after that transaction is completed, the follow-up starts, so I think from a practical point of view it would be extremely difficult to time our investigators to a certain time, and it would be extremely expensive, from the point of



view of the taxpayers of Ontario.

BY THE CHAIRMAN:

Q. If they wished to follow up any such procedure, an investigator of the S.E.C. in Washington could do it, in the United States?

A They could do it.

Q And supply you with that evidence?

A Yes.

BY MR. JOLLIFFE:

Q. If a high-pressure house was interested in re-loading, I think it would be reasonable to expect a telephone call to follow.

However, I was wondering if it had ever been attempted. So far, the cases on which you act are based on telephone calls, in cases on which you got affidavits from the purchaser?

A Yes. There is the Halpenny case, and there may be others. I cannot just recollect now.

THE CHAIRMAN: Shall we adjourn now until 2.30?

MR. JOLLIFFE: Yes, Mr. Chairman.

---The witness temporarily retired.

---Whereupon the further proceedings of this Committee adjourned at 1.00 o'clock P.M. until this afternoon at 2.30 o'clock.

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AFTERNOON SESSION

Toronto, Ontario,  
Thursday, August 23, 1951,  
At 2.30 o'clock p.m.

- - - - -

---The further proceedings of this Committee re-  
convened pursuant to adjournment.

---All parties present.

---Same appearances as heretofore noted.

- - - - -

OSWALD ELMER LENNOX,

A witness previously heard and now recalled, who,  
having been already sworn, continues his testimony  
as follows:

THE CHAIRMAN: Proceed.

BY MR. JOLLIFFE:

Q. Mr. Lennox, yesterday we had some dis-  
cussion of the releases from escrow reported in the  
June issue of the Bulletin?

A Yes.



Q I wondered if you had any opportunity to look into the one particularly discussed -- the Quebec Copper Corporation Limited?

A Yes. I have looked into that.

Q I notice this because effective June 19. At the moment the broker-dealer concerned is running an advertising campaign in connection with the same stock. Have you noticed that?

A Yes; and, it is a listed stock.

Q I note it is a listed stock. Do you think the advertising campaign has any connection with the release from escrow of more than one-third of all the stock then escrowed?

A Well, the advertising campaign is the normal procedure following acceptance for filing, I mean, when a public offering has been made.

Q I take it acceptance for filing was much earlier. This follows a release from escrow, you say?

A Well, ---

Q What I am getting at is, that I would not think you would consent to the release of 190,000 shares from escrow unless there had been previously acceptance for filing and substantial sales of



Treasury shares.

A Oh, no doubt there had been substantial shares. I believe this has been offered in the province of Quebec and qualified in the province of Quebec.

Q Yes. It seems to me rather significant that the campaign, which is quite an active one, should follow so soon after the release of those shares from escrow?

A I am sending for the file.

Q In answer to questions Mr. Houck on another occasion you gave us figures and percentages, I think, for American citizens who are registered?

A Yes.

Q But I believe those figures relate to the present time?

A Yes; probably as of the end of June. I had them prepared when I knew I was going to be called before this Committee.

Q Yes. One of the exasperating things about this business is there are so many rumours -- although many of them are obviously exaggerations -- which probably ought to be set at rest by the actual figures.

One of the rumours is that a very large





number of Americans have been licensed not only during your administration, but during the preceding administration. Would it be possible to give us the exact figures going back to 1933, when, I believe, the American act was passed?

A Well, I have a complete list going back to 1933. I could put it in as an exhibit. As I say, this list goes back to 1933. It does not cover every American who has been registered in Ontario over that period, but it covers every American citizen who has been registered during that period, and who is still registered.

Q It would not tell us how many had acquired temporary registration?

A For instance, if somebody was registered back in 1937, for example, who was no longer registered, his name would not be on my list. If he was registered in 1937 and he is still registered with the Commission, he is on the list.

Q Yes. Your list just shows the survivors?

A The survivors, exactly.

Q You see, I would like to get a figure which would put us right on the number who actually obtained registration at one time or another since 1933, or



whenever registration began.

THE CHAIRMAN: American citizens?

MR. JOLLIFFE: American citizens.

THE WITNESS: That might take some time. It is hard to estimate the time it might take. It might take weeks. We transfer our records ---

BY THE CHAIRMAN:

Q You do not classify it that way in your records?

A No. We transfer our records to obsolete files after a period of time.

BY MR. JOLLIFFE:

Q I will not press for it, but I do suggest that it will be useful to have the exact figure instead of someone's estimate as to the figure.

A I will canvass the possibility of getting them, Mr. Jolliffe, but that is going to be very difficult. With respect to rumours of which you speak on Bay Street, if one were to heed the rumours which come from Bay Street, speaking for my own part, I would soon be down on Queen Street.



THE CHAIRMAN: On the corner of Queen and Bay Street.

MR. JOLLIFFE: There is another figure which I would, also, like to get, if possible, for my own satisfaction as well as to set at rest any sort of rumour with respect thereto.

Can give you give us the figures .of the number of persons disqualified by the previous administration who have been granted registration since you became Chairman?

THE WITNESS: Yes; I can. There are fifteen individuals who have been allowed registration by the present full commission who had previously lost their registration or who had been refused registration. I have not granted registration to any person or any company that the full commission has not.

Q In each case you make it a rule to let that go to the full Commission?

A Absolutely.

Q Have you a break-down as between broker-dealers and salesmen?

A Ten of those are salesmen.



Q And are the other five all broker-dealers or are there any investment counsellors?

A All broker-dealers.

Q Ten salesmen and five broker-dealers?

A That is right.

Q And, do those fifteen survive or have any of them been, again, disqualified?

A One is dead.

MR. JANES: You might discount him.

THE WITNESS: No. They survive.

BY MR. JOLLIFFE:

Q. E xcept for the man who died?

A Yes.

Q You also told us that in any case where there is a criminal record involved, I think you allow the matter to go to the full Commission?

A That is right.

Q If he dèsires to go there?

A Yes; I mean, that is a condition precedent to the person obtaining registration.

Q You told us that there were cases in which it was considered that the debt to society had been





paid and registration should be granted.

A        There are. I can think of one specific case where the chap involved was found guilty of juvenile delinquency, as we understood it when we were juveniles, -- a boy who, in his teen-age period got into trouble.

BY THE CHAIRMAN:

Q        It was not an offence in connection with fraudulent dealing in securities or anything of that kind?

A        No.

BY MR. JOLLIFFE:

Q        Do you have a figure of the number of those registered at the present time who, to the knowledge of the Commission do have criminal records?

A        To my knowledge I cannot think of any person who has a criminal record who is registered with the Commission.

Q        At the present time?

A        Yes. There may be some. As I say, there may be some who were considered by the full Commission during the course of the general review, when we



dealt with 146 cases; but, in the more recent cases, I cannot think of any one excepting the case, of, possibly, juvenile delinquency.

Q Is that the case of which you made mention previously -- the armed robbery case?

A Oh, no, because that person is not registered at present.

Q He is out?

A Yes.

BY MR. DOWNER:

Q On the application for registration, are they asked whether they have any conviction registered against them?

A They are asked that, and their application is verified by affidavit. We have had one case of conviction in respect of the making of a false application, before my time, along those lines. That case involved the non-disclosure of a conviction. There is another charge pending at the present time.

BY MR. JOLLIFFE:

Q As far as you are concerned, that must be disclosed?

A Yes. It means one makes a false affidavit



if it is not disclosed.

Q Mr. Lennox, this is a general question, but I would like to get your comment on it, even though it may involve an expression of opinion. Please understand this does not necessarily imply that you are responsible because there are many other factors involved.

What do you say to the proposition that the volume of mailings of international solicitation and so on, have been greater since 1947 than ever before in any similar period?

A I would not dispute that.

Q You agree that it is correct?

A I have every reason to believe that it is correct, Mr. Jolliffe.

Q Notwithstanding the restraints which you have imposed during the period?

A Yes; that is correct.

MR. JANES: That is understandable. There is much more money kicking around.

MR. VILLENEUVE: And, with the consequent tax involved.

MR. JOLLIFFE: Yes. That is what I meant by saying there are other factors involved apart altogether from administration.



THE WITNESS: It has been my biggest concern, as a matter of fact---the increase in mailings.

Q This morning you and I were discussing both telephone calls and mailings to the United States?

A Yes.

Q And I quoted your sentence in the Norwitt decision in regard to telephone calls. I intended to ask you this question, with reference to your statement with respect to telephone calls abroad, that when a call is made to a foreign country the chances of detection or proof of fraud are remote?

A Yes.

Q Can you suggest any solution to that problem apart from stopping such telephone calls altogether, because if there is another solution I would like to hear of it?

A I do not think that there is any direct solution, Mr. Jolliffe; I think that the Broker-Dealers in trying to improve their membership will slowly provide an indirect solution.

Q Do you mean by that that the calibre of the salesman depends a good deal upon the calibre of the Broker-Dealer who employs him? Is that what you mean?

A Well, that is effective. The , there is another factor, of which I have made mention earlier, namely, the bond requirement. I think that some Broker-Dealers





who enjoy a fairly decent reputation as citizens will find they are embarrassed in their application for bond because they are employing the wrong type of salesman and they will rid themselves of that type of salesman.

Q You said that you believed that at least one Broker-Dealer had resigned because he could not get a bond. The bond relates to employees. Would that be because that particular Broker-Dealer knows his employees would not pass muster, or what did you have in mind?

A I know that his name has been mentioned here and he has a fraud order against him in the United States. That may be the reason.

Q I am a little puzzled, but perhaps the Broker-Dealers, themselves, can tell us more about this than you can. I am puzzled as to how you can get a bond from a bonding company in respect of employees having regard to the fact that when the personnel changes from time to time the bonding company does not really know who they are bonding.

MR. JAMES: They would have to name their employees on that bond, surely.

MR. JOLLIFFE: I would think so.

Q Is there not quite a turnover of these salesmen?



A Yes, there is. As far as the bond goes Mr. Wismer is here to explain it. He is in a much better position than I am to explain.

Q Yes. I will go into it later with him.

There is another point, Mr. Lennox, which interests me, arising out of the decisions of your Commission. I have referred to it before, so have you, and I would refer to the June bulletin and in particular your decision in the case of Harry Price and Company. That is a decision by yourself as Chairman. You will remember in that case, after dealing with the surprise audit and the deficiency in an account--

A Deficiency in working capital.

Q Deficiency in working capital. You said:

"If on the other hand Price has not substantial financial resources, in his own right, the deposit to his capital account of \$10,000 under the circumstances serves as direct evidence that he is a 'front.' In either event the printing and mailing concerns which have extended him credit -in excess of \$25,000 are no doubt aware of the nature and extent of his resources. Similar situations involving the printing trade have previously been brought to the atten-



tion of this branch of the industry and the apparent link between the printing trade and certain promotional houses was considered in cancelling two registrations in 1949."

The question which occurs to me is: I happen to have had something to do with the printing trade in Toronto---at least, I have taken part in negotiations with most of the printing houses in Toronto or their representatives and I know something about them. Toronto is the biggest printing centre in Canada. There are about one hundred printing houses of substance in Toronto. There is a total of about 500 if one includes all the one-man shops.

There are about one hundred printing houses in Toronto.

A That includes jobbers, I take it?

Q Yes; commercial printers. They are a very substantial and important body of businessmen. It strikes me that your reference here to the printing trade is something of a reflection on a very important and legitimate business. Just what is meant by "the link between the printing trade and certain commercial houses"?

A I meant with the branch of the printing trade which extends these large credits to these Broker-Dealers.



Q A branch?

A I mean the particular printing houses which do it.

Q I know a good many of them and I cannot imagine the type of printing house of which I know in Toronto being mixed up in that kind of deal.

A Mr. Jolliffe, there are some members of the printing fraternity who are, according to my understanding, mixed up in it. That bulletin is published for the benefit of the brokerage industry, not for the public at large. If it gets in the press that is not the fault of the Commission. I think those remarks are addressed to the brokerage industry. It is intended to educate them along certain lines---and they understand what it means.

Q You will agree that this statement does not apply to the printing trade generally?

A No; it only applies to certain printing houses which extend that type of credit.

Q It applies to a very narrow field?

A Fairly narrow.

Q I would like to go back to the bulletin of February, 1951. I refer particularly to page 5. This involves a decision in which you cancelled the registration of an investment counsel, type one.





"The bulletins issued by Hall follow a fairly consistent pattern, by referring to listed issues which follow the general market trend. Then at intervals he would announce a special situation. The company in question was a special situation. It is at least significant that this issue stands out as an unlisted issue against a background of listed issues normally dealt with in his bulletins. It is further significant that he freely admits being indebted to an individual in the amount of \$1,700---to a printing company for \$1,000---" "printing company," again.

"---and that his individual creditor is the president of the printing company according to official records on file; and according to statutory information on file with this Commission as of the 10th of June, 1950, his creditor was the holder of 427,500 shares in the company in question."

Here we have the printing business mentioned again. Are you prepared to tell us anything more about this?

A Yes. I think I can explain that very readily. I was working on drafting that decision and I named the



individual who was the creditor, the president of the printing company, who held 427,500 shares, and, before I issued it, I realized that this individual had not been called before the Commission and given the opportunity to present his own case. So, very much to my regret I had to abandon naming him.

Q. I understand.

This may have no connection with the matter, but, at the same time, this would be as good a time as any to ask you about the case.

In October, 1950, you disqualified another investment counsel, type one. In that case you said:

"Specifically we suspect he has been deliberately misrepresenting or exaggerating the potentialities of the stocks he has recommended, possibly for an ulterior motive. The fact that his mode of operation was almost exclusively through the 'no performance, no pay' type of subscriptions, and that his books indicated a substantial financial loss from operations suggests this. Furthermore his association with a promoter against whom the Commission has had to take disciplinary action does not allay our suspicions."



Is this the same kind of case?

A        Pretty much. Is that the full Commission?

Q        It does not say. I would assume it is one of your decisions. It is not signed.

A        Full Commission. I think the approach of the whole Commission in that case was--

Q        It was the full Commission, because it is an appeal?

A        ---that, by the process of elimination, the man in his operation could not even pay expenses. The inference would be that he was being subsidized by the persons interested in the stock that he was sponsoring. Possibly that is not good evidence in a court of law but a Commission has to be fairly realistic in dealing with this type of case.

Q        Is it correct that you came to the conclusion that he was a "front"?

A        We came to the conclusion that he was <sup>issuing</sup> a tipster sheet.

Q        Investment counsel can act as a "front"?

THE CHAIRMAN: In a different sense.

MR. JOLLIFFE: In a different way, yes.



BY MR. JOLLIFFE:

Q Is the promoter involved here the same as referred to in the other case I just quoted, or a different person?

A No.

Q The reference I just made is to be found at page 3.

In the bulletin for November, 1949, referring to pages 8 to 11, you dealt with the case of a Broker-Dealer named Jones. It is a quite long decision. I do not think it is necessary to refer to the whole of the decision. It is your decision?

I take it there was no appeal?

A No; there was no appeal.

Q You stated, among other things:

"I have indicated that at the outset he lacked a sense of responsibility. There are further facts which establish that between June 23rd and July 16th, during which period he did not even occupy an office, he assumed no responsibility whatsoever. During this period a printing firm took charge of the terrific volume of mailing





and the replies which were received. A solicitor and an advertising concern looked after certain other details. He stresses the fact that he placed much reliance in the advice and assistance of his solicitor but the solicitor in question acted for the company in qualifying the issue and was scarcely in a position to advise Mr. Jones on certain important matters involving the interests of the company, the promoter, the optionee and Mr. Jones as sub-optionee."

and so on. Here we have the printing business mentioned again. Is this the same firm referred to later in other cases?

A I think that is the first time that printing business was referred to. It is not the same firm as that which was referred to in the Price judgment.

Q It is not the same firm?

A No; because I recall specifically the Price judgment was given on the matter a few months ago. I can remember the name of the firm in that:

This one I remember because one of the officers of that printing concern protested to me about something or



other---I just forget.

Q This is one involved in the Price judgment(indicating)?

A No; this one (indicating).

Q Of course, from my limited knowledge of these things, it strikes me, as it must have struck you, as rather incredible that an ordinary printing firm would extend credit of over \$25,000.00 to a relatively small business. I could understand it if the client--

THE CHAIRMAN: That is, apparently, how the Commissioner felt.

MR. JOLLIFFE: Yes; quite.

BY MR. JOLLIFFE:

Q Later in this decision, Mr. Lennox, you said, also:

"There are two feasible reasons why a dealer would venture upon such an undertaking. Either he is not an independent operator or he is participating in the promotional profits accruing from the undertaking over and above his legitimate profits resulting from the public offering. I must, of course, accept Mr. Jones' testimony that he is not



sharing in the promotional profits. On the other hand there is ample evidence to show that he is not independent. He invested \$1,500.00 only in a venture involving an initial cost of over \$100,000."

What would be that initial cost---printing and organization?

A Printing, the cost of equipping his office, deposit with the Bell Telephone Company and all the things incidental to an undertaking of an extensive mailing and telephone operation.

Q And, I suppose, the printing and the mailings, too?

A Yes.

"The Registration of McGill Securities (Ontario) Limited was suspended indefinitely due to Mr. Kaftel's, its president, part in this operation (August bulletin). Mr. Jones besides being irresponsible is not a free agent. He was bound to take orders from those in financial control. He had really nothing to lose in taking part in the type



of operation which is doing more to undermine the industry than any other type of operation."

When you say "type" of operation, to what do you refer---this heavy mailings business?

A The type of operation adopted by a person who was taking orders from somebody behind the scenes and being financed by somebody behind the scenes. Apparently Mr. Jones was willing to accept my version of the matter and because he did not see fit to appeal to the full Commission.

Q No; he did not appeal.

Did you come to any conclusion in that case as to who was behind the scenes? You just said that he was taking orders from somebody behind the scenes.

A I did not say it in so many words, but I made a certain inference there by linking it up with another suspension.

Q That is, in the language of the decision, itself?

A Yes.

Q And you said in the same decision, after summing up the reasons why you regarded him as a "front"---and you used the term "front":





Perhaps, in fairness, I should read the paragraph, because it sums up the reasons. There certainly seem to be good and sufficient reasons why in this case you cancelled his registration. You said:

"In the result, Mr. Jones has provided an outstanding example of what is commonly termed 'a front' not for the purpose of acting on behalf of someone who could not obtain registration, but in order to carry out the type of operation which his backers would not care to risk. He has been part of an operation which presents unfair competition to other dealers who are trying to operate within the compass of their own financial resources and consequently within reasonable bounds as opposed to the high pressured high volume pattern. He has sponsored an issue financed on a basis which is unfair to the investing public in which questionable sales methods have been employed. Until



trouble developed he ignored an important provision of The Securities Act. Lastly, he merged his brokerage business with the printing industry to the detriment of the former."

That was a pretty extreme case?

A Very extreme, I would say.

Q Then, there is an even earlier case, in which you also made reference to "the printing business," in August, 1949. You said:

"In the course of a current investigation it was disclosed that a printing company extended credit in excess of \$50,000 to a Broker-Dealer, thus enabling this dealer to flood the mails outside of Ontario with promotional literature. Mr. Frank Kaftel owns 90% of the capital stock of the printing company in question. Kaftel also controls McGill Securities (Ontario) Limited, registered with the Commission and a Broker-Dealer. The business manager of the printing company is also a director



of the McGill Securities Company.

"This is an obviously unhealthy situation that does not require further discussion at this stage, as Mr. Kaftel will be afforded ample opportunity to make representations if he applies to have the suspension of the registration of McGill Securities (Ontario) Limited lifted.

"I might, however, point out that Mr. Kaftel has indirectly been instrumental in flooding the United States mails with literature, despite his written undertaking not to make any offerings in the United States unless the issue was duly qualified.

"The registration of McGill Securities (Ontario) Limited will be suspended until further notice."

and, I gather there was no appeal from that decision?

A No; no appeal; and no application to lift the suspension.

Q It has been a dead issue since?



A Yes.

Q That particular license may have been a dead issue since, but you have continued to have trouble with the printing trade, I take it, from what you have already said?

A Yes.

Q Because in subsequent cases the printing trade keeps cropping up?

A Right down to within the last month or two. The Harry Price decision is in June, I believe--

Q Although that was a different printing house?

A A different printing house.

Q Is it correct that at least two---and I point out you have mentioned two---printing houses are extending credit and acting as the financial backers of Broker-Dealers who indulge in this type of campaign?

A I can think of three which have. There is the one which entered into the Price question, there was another printing house which extended credit and we had to insist upon that printing house subrogating its debt in favour of the creditors, <sup>and</sup> possibly other creditors and then there is the printing house involved in those earlier decisions in 1949.





Q- You think of these three in particular because of the credits extended?

A Yes.

Q We do not think we are interested in a printing house which did a printing job in the ordinary way.

A Oh, certainly not.

Q On a normal business basis?

A No.

Q But the three you had in mind extended credits, which seemed to you to be unreasonable. Is that correct?

A That is correct.

Q In fairness to those who have not been mixed up in this sort of thing I think that you should identify those who are, otherwise, I feel, it is a reflection on the printing houses which would not think of doing that sort of thing?

A You mean name the printing houses?

Q The three which you have encountered as extending undue credits?

A I can. It always goes against the grain to name a person when they have not had a chance to



Q I know. They could come here if they liked. The only reason I am doing it is that I think some of the things which have been said in the bulletins and also in press releases---because sometimes there have been releases in connection with these decisions ---which, unless explained, are something of a reflection on all the printers, because it makes people look with an unpleasant light on the printing trade generally.

A It goes back to 1949, when I mentioned the printing trade, and this is the first information I have ever had that the printing trade at large takes any objection to the observations.

Q I did not say they did.

A I will get the names. I certainly remember the name of that first one -- the Harry Price case. It is one of the two firms and I just forget which one it happened to be.

Q But, there are three which you definitely have in mind?

A Yes; there are three which I have in mind.

Q And these are firms which are in the printing business and which require no registration with you?

A No.

Q which,  
But, /in your experience, extended surprisingly



large credits to broker-dealers?

A       That is right.

Q       With the result that you have had to take disciplinary action?

A       With the result that it has been a factor in the cancellation of registrations.

Q       The reason I am pressing this point, I want to make clear to you, is that we heard, during our inquiry into gambling, the policeman tell us that it is not so difficult to identify and charge the front man -- the man who deals with the public, the man who accepts illegal bets -- but the difficulty is in finding the principal, the fellow who is behind him, because that fellow does not deal with the public. I raise these questions because I think exactly the same issues arise here.

THE CHAIRMAN: Of course, it is different in this respect, that the broker-dealers are comparatively few and they are licensed people, whereas, in the book-making business, the fronts are not licensed people, but are a great mass of little people who operate on the street corners and everywhere else. Here the one legitimate method, which has been followed by the



Securities Commission, is to deal with people over whom that body has control, namely the registered brokers. If they are operating as fronts, their licenses are cancelled. That is one thing the Commissioner could put his finger on.

MR. JOLLIFFE: That is, if the Commission gets evidence of that.

THE CHAIRMAN: That is right.

MR. JOLLIFFE: That is, that a man is a front, and then that front man loses his license.

THE CHAIRMAN: Yes.

MR. JOLLIFFE: He is penalized. His name is made public -- at least it appears on the financial pages of the newspapers -- and there may or may not be any definite loss to him. On the other hand, there may even be a prosecution. That is a possible result. But, all this proceeding does not result in any public penalty being made on the man behind him.

THE CHAIRMAN: That is right, unless, of course, some fraud can be proved against him.

MR. JOLLIFFE: Yes.





THE WITNESS: The difficult thing about this whole matter would be that in the case of Jones the credit was extended from a big printing house which had the equipment to do any type of printing, of practically any kind, then they drop out of the picture. They drop out of the picture, and it is taken over by what I think you call "jobbing houses," which take orders and then farm the orders out to different places.

My opinion is that the little jobbing house which was employed in the Harry Price case is nothing but a subsidiary of the big printing concern which was dealt with in 1949.

Q        You suspect it was the big printing house which was really behind the scenes?

A        Yes.    If this Committee wishes me to disclose the names of those little jobbers, as well, the next thing will be split up far more. There will be ten little jobbers mixed up in the matter, and it will go on and on, until we will never be able to identify in which group it is.

MR. HOUCK: I followed Mr. Jolliffe very closely, and I do not think it would serve the purpose



of this Committee to have these printers named.

MR. JANES: If they had been dealing with the broker and had quite a bit of business for a long time, they would be justified in extending credit to him for quite a while -- and carry him, too.

THE WITNESS: The brokers do not last long enough.

THE CHAIRMAN: It is a matter of degree, under all the circumstances.

BY MR. JOLLIFFE:

Q If a printing firm were to extend \$50,000 credit to General Motors, or to International Nickel, after doing work for them steadily over a period of years, it would be perfectly understandable; but, in one of the cases with which Mr. Lennox dealt, there was \$50,000 credit extended to a broker-dealer who, I think Mr. Lennox will agree, was not operating on a colossal scale. That just did not seem reasonable to me.

A No. That was Jones' last deal. The Price case was Mr. Price's first and last deal.



Q Exactly.

A And, what I pointed out -- which seems a long time ago -- when I was first giving evidence, is that we have now got to the point that it does not pay the back man to set up these fronts, because we have also got to the point where there are no replacements. We are putting them out. There has not been a replacement in the broker-dealers category since April 1st last.

THE CHAIRMAN: In other words, these front broker-dealers are gradually being weeded out by this process and I suppose it is more difficult to get some man to come forward who will qualify for broker-dealer registration to replace the man who has dropped out.

A Price sold half a million or three quarters of a million shares. It doesn't pay to set up an elaborate office and pay for the cost of printing and everything else and have a deal knocked down before it has gone through half-way.

BY MR. JOLLIFFE:

Q And, on his first and only deal he had \$25,000 credit from a printing firm.



A        On his first and only deal, and on Jones' first and only deal.

Q        That just does not make sense.

THE CHAIRMAN: Yes. On the basis of those facts, the Commission acted.

THE WITNESS: Neither appealed to the Commission nor exercised their further right to appeal to a judge of the Court of Appeal of the Supreme Court of Ontario.

MR. JOLLIFFE: I do not think any of us is questioning the correctness of your decisions with respect to those cases.

THE WITNESS: I am very glad to hear you say that. I would hate to stay my hand until --

Q        Is it sufficient to keep knocking off these front men, when they are only front men? Is that good enough, or can we rely on the theory that sooner or later the reserve of front men will be exhausted and it will be impossible to fill the ranks any longer?

A        I do not think the reserve of front men will be exhausted. I think if the Commission keeps up dealing with these people when they engage in





their first deal, it will not pay the man <sup>with</sup> / his financial proposition to keep continually setting-up fronts.

BY THE CHAIRMAN:

Q It is not only the broker-dealer who loses on that cancellation, it is the man who finances the broker-dealer, who finances the transaction?

A Yes.

Q He is the one who loses what he puts up.

MR. GRUMETT: Should we not know the names of these men who are putting up the money, then?

MR. JANES: Could we not make it a bit tougher in the setting-up of these fronts?

THE WITNESS: When you get the front on his first deal, I think that is about the toughest thing you can do to them.

THE CHAIRMAN: If you can take the profit out of it for him, that is the way to make it tough. If you were to catch every thief on his first job, there would not be much stealing in the province.

MR. JOLLIFFE: When the police charge a



bookie. I think they would welcome knowing the principal.

Q Have not any of these front men been willing to tell you who their backers are?

A No, Mr. Jolliffe.

THE CHAIRMAN: On the other hand, under the Act as it is now framed, as I understand it, the people who extend credit in this way have not committed any offence in respect of which any charges could be laid.

Q Is that right?

A You might lay a charge under the Act that they acted in furtherance of trading. That definition of "trading" is very broad; "In furtherance of trading". The maximum penalty for that, even if they are convicted, is two thousand dollars. That is two thousand dollars to a man who extends credit of fifty thousand dollars?

THE CHAIRMAN: Yes, and they might have an elaborate defence to any charge of that kind.

MR. JOLLIFFE: Yes. That is true of the book-making game.

THE CHAIRMAN: The principal in the bookmaking



game is one who commits an offence under the Criminal Code, whereas, the man who extends credit to a broker-dealer, is merely a creditor under the law unless, as Mr. Lennox says, it could be said that he is in some way furthering a trade. The question would be one, again, of degree.

If a printing firm loaned \$1,000 to a broker-dealer, I would think it would be unlikely that any court would decide that that was furthering a trade within the meaning of The Securities Act. If he extends \$25,000 credit, it might or might not be. He might be a man of great resources who would be willing to take a chance, and who was so confident that the stock would be sold, therefore, he would be all right.

MR. GRUMMETT: He might be the owner of a big block of shares.

MR. JOLLIEFFE: Yes -- the owner of 427,000 shares in the company.

THE WITNESS: The definition of "trade" says, at the end, "and any act in furtherance of the same".

MR. JOLLIEFFE: What section is that?



THE WITNESS: "Trade or trading includes"  
and then --

MR. JOLLIFFE: What section?

THE WITNESS: I am sorry. I have lost my  
place again. Page 566:

"Trade or trading includes"

--a very wide definition, and Clause V says:

"Any act, advertisement, conduct, or  
negotiation directly or indirectly in  
furtherance of any of the foregoing"

MR. JOLLIFFE: "Any act, advertisement,  
conduct or negotiation, directly or indirectly in  
furtherance of any of the foregoing."

THE CHAIRMAN: Would that not include any  
printer? Would that not include any printer who  
commits an act in furtherance of trade by an adver-  
tisement?

MR. JOLLIFFE: Yes, but I am sure the court  
would take into account that he functioned in the  
normal course of business/<sup>not</sup>as the real principal in the





operation.

MR. GRUMMETT: In good faith.

MR. JOLLIFFE: Yes. On the face of it those words would seem to indicate that there is included the backer, the man who put up the money and extended the credit.

THE CHAIRMAN: The other point I think the Commissioner has in mind is that the backer has not a license, does not need a license to carry on his printing business, and the most one could do against him would be to get a conviction under this provincial statute, where the penalty is limited. The penalty the magistrate would impose might be very much less than the maximum. In that case he loses nothing. Should the dealer lose his license, he cannot carry on his business at all. He is the man who suffers.

MR. JOLLIFFE: At least bring him out in the  
light of day, where, apparently, he does not<sup>now</sup>/function.

BY MR. JAMES:

Q You could not compel that front to tell who was his backer?



A       No.

Some mention was made where some of these fronts or brokers might not give information about their confederates, shall we say. I have never heard a single member of the brokerage industry, shall I say, "squeal" on another. They will start rumours down on Bay Street, hoping that it will get up to you by the grapevine, eventually, but they will not come up to your office and tell you.

THE CHAIRMAN: There are other members of the profession who will do the same thing.

THE WITNESS: So, I think they are different than the legal profession.

THE CHAIRMAN: The legal profession has a discipline committee which takes drastic action every once in a while.

MR. JOLLIFFE: Yes; and, sometimes on the complaint of a member.

MR. JAMES: In the trial of a certain boot-legger, it was said by him that he did not know from whence the liquor came. He said he turned, looked



back, and there it was.

BY MR. JOLLIFFE:

Q Mr. Lennox, yesterday you made some reference, some remarks, about fronts -- as you have previously, also -- and you said, I think as a matter of opinion rather than as a matter of direct evidence, that certainly some of the broker-dealers who caused trouble for you, are not independent, but they are fronts, and that you think or suspect that some of their backers have a number of fronts, that is, more than one front. You will remember I asked you some questions about these middlemen. I asked you whether the middleman was being used as a device for concealing the backers, but I do not think you put much stock in that.

A There might be a so-called middleman who was also a backer, but I do not think there it is a necessary set-up. I think it is just incidental.

Q You do not think that was a very useful device for the purpose of a man who wants to hide his **part** in a promotion?

A I think he is running even more risk of being detected.



Q       What about the printing business? Do I gather from your decisions and from your evidence here that the printing business affords a convenient device for promotions with fronts?

A       No; not necessarily; but the printing trade is a very necessary matter in relation to the type of operation carried on by these people.

BY/THE CHAIRMAN:

Q       Is this not the situation, as you have explained it, that there are certain examples named and three at least which you have mentioned where the printing business was used as a device -- at least that was your view of it -- that you thought in view of all the circumstances and the amount of credit which was extended -- and as a matter of fact, having regard to the whole transaction -- you came to the conclusion that the printing credits, the credits from the printing house, was a device for constituting a certain broker dealer as a front; and you say that once that becomes less profitable, there may be some other way of spreading it amongst jobbers so it will not appear quite so clear, and it will be more difficult to trace down. I suppose





there might be some other method of setting up these fronts which could be devised, if they have not already been devised. After all, man is an ingenious animal, and especially where there is profit in sight, the ingenuity becomes very acute.

A The term "front" can be misunderstood, as a matter of fact. Fundamentally a "front" is some person who acts for another person who is unable to obtain registration. When he is acting for some person who could obtain registration if he saw fit, strictly speaking, it is not a case of "fronting."

Q Just a moment.- - -

A A better term would be that he is not an "independent operator." If you go back into the history of the thing, the "front" essentially was a man who took out registration for a person who could not get registration.

Q That is one type of "front," true; but there is this other type of "front," the type you have mentioned, where a broker-dealer becomes so heavily indebted to some other person in the background, who is the real principal in the transaction, that he really has no alternative but to carry out the orders and the policy which is laid down by the man in the



background. Is that not really to what it amounts?

A Yes.

---Thereupon a short recess was had.

---Upon resuming, Acting Chairman Villeneuve in the Chair.

THE ACTING CHAIRMAN: Order, please.

Will you kindly proceed?

BY MR. JOLLIFFE:

Q Mr. Lennox, to come to the part with respect to the problem of the backer and his front, or fronts, if there are more than one of them, can you suggest any way of restraining the activities of the backer either by amending the act, or otherwise?

A No. I do not think you can meet the situation by amending the act. I pointed out to you previously that I am placing considerable value on this new type of bond which has been proposed by the Broker-Dealers' Association.

Since the first of April there have been no new registrations as broker-dealers, and that is extraordinary because at one time they were averaging



about one a week -- referring to applications -- and we are now making the whole situation unprofitable.

BY MR. JAMES:

Q Do you think the bond has something to do with it?

A Because they cannot get in.

BY MR. JOLLIFFE:

Q There have been half a dozen suggestions given to me as to the reasons for that inactivity with respect to applications and, also, a certain amount of inactivity, perhaps, with respect to mailings.

One reason which has been suggested to me is the necessity of getting the bond by October 1st, -- is it not?

A Yes.

Q Another reason which has been suggested to me is the number of cancellations and suspensions in the early months of this year?

A Yes.

Q Another reason which has been suggested to me is the publicity which has been given to the matter both in the United States and Canada in the



Press with respect to these people in recent months?

A Yes.

Q And, yet another reason which has been suggested to me is the meetings of this Committee, what do you say as to that? Do you think that all or any of these reasons have any validity?

A They all occurred to me, except the last.

Q You know what has also been suggested in the same connection -- and I would be very much surprised if this suggestion had not come to you also -- that when some of the hue and cry dies down it will start all over again. Have you heard that one?

A Naturally, we are anticipating that, that is only --

Q You are anticipating that?

A Yes. These things all go in cycles, but I may be unduly optimistic about the effect of this bond. I think it will have effect, and I think if the Commission keeps on consistently checking on the new registrations, it will have results.

Q But both bonds which you showed us are related only to employees.

A Mr. Jolliffe, I am not saying anything about





the bond in itself, but I know that I granted registration to a broker-dealer, but he could not get a bond, so he did not get his registration. It is not a stringent bond, but it is having some effect.

BY MR. GRUMMETT:

Q I think you were to bring down a copy of that bond, Mr. Lennox?

A I left several of them here yesterday.

Q That is, the employees' bond?

A That is the type of bond which the broker-dealers are demanding, and we suggested yesterday that it be dealt with when the broker-dealers are called upon to give evidence.

MR. JOLLIFFE: I think Mr. Grummett is referring to the former bond.

MR. GRUMMETT: Yes.

Q You promised to bring down a copy of the former bond which was used.

A I forgot to do that, Mr. Grummett, I am sorry. I made a note of it, too.

BY MR. JOLLIFFE:

Q Mr. Lennox, having regard to these avenues



for improvement which you suggest -- that is, closer scrutiny by the Commission, the work of the Broker-Dealers' Association, the bond, and so on, -- they have been in operation during recent months, and yet you have told us that you are satisfied there are fronts operating at the present time.

A Well, I can only repeat over and over again, Mr. Jolliffe, that, for the sake of argument, supposing three of our cancellations have been sponsored by the same group or the same individual -- hope springs eternally -- but when it gets over three strikes, it begins to hurt. I think we have got to the point where it is no longer profitable for some of these people who have been operating through fronts --

Q What was the nature of these applications -- broker-dealers or salesmen?

A Broker-dealers.

Q You say they were sponsored by the same individual?

A I say, for the sake of argument, to take the number of cancellations which have taken place in the last year; supposing that three of those cancellations are related to the same sponsor, they may still think there is still a chance to make a profit, but if it



has arrived at the saturation point, there will not be any profit.

Q You were presenting a hypothetical case?

A Yes.

Q I understand.

From some of the statements you have made, I would assume that you have some fairly definite ideas about who are the fronts and who are the backers thereof, even though you may not be able to prove it. You have?

A I think that I have one group at least fairly well identified, and I think that they have suffered several casualties over a period of a year or so. One way of tracing the group is the way the salesmen transfer.

Q You are advised, of course, of transfers; in fact, you have to give your consent to all transfers of salesmen?

A Yes.

Q Do you say they follow a certain pattern?

A If you make a study of the moves these salesmen make from deal to deal, when they start going around the circle a second time, you get a pretty good idea of where the group is.



That is only an illustration. I would not want to tell you of all the devices, because Bay Street would know more about what our Commission is doing, than our Commission does itself.

MR. JAMES: Giving away your trade secrets.

BY MR. GRUMMETT:

Q In other words, the person behind the front acts as a magnet to these salesmen?

A He is the boy who cracks the whip for the salesmen as well as the brokers.

BY MR. JOLLIFFE:

Q When you said that you knew of at least two factions among the broker-dealers, do I understand you to mean that one faction represents one backer, and the other faction represents the other backer, or a backer and his associates?

A Probably I should not have said "two factions." I think probably a better term would be "two groups."

BY MR. DOWNER:

Q Would you say one group was anxious to do things on the up-and-up and the other group just





a little easier?

A I would not make much distinction.

Q You would not make much distinction?

A No.

BY MR. JOLLIFFE:

Q If they both used fronts, you would not regard them as a very responsible type?

A No.

Q Is it not a fact, Mr. Lennox, that the legitimate end of the business, the legitimate houses, with whom you do not have any trouble, do not have fronts?

A No, of course they do not.

Q Or conceal the identity of the actual owner of the business?

A Not that I know of. I do not know any reason why they would.

Q Have you ever had any experience of any such case apart from the groups we have been discussing?

A I do not know that I exactly follow you, but I have not had any experience except with the people who we believe are fronts, that is all.



Q And they are to be found within the thirty-five which you have mentioned, that is, the thirty or thirty-five?

A Yes. They are within that group.

Hon. Mr. Porter in the Chair.

BY MR. JOLLIFFE:

Q Would you not say that at least three of the cases to which I have referred this afternoon suggest very strongly a rather intimate connection between one printing house and some of the fronts?

A That is, the Jones case, the Price case, and --

Q The Hall case, the McGill case, the Jones case and the Walker Hall case.

A Oh, no Walker Hall has nothing to do with that group in any way, shape or form. I told you yesterday there were people on Bay Street worse than Albert DePalma, and I think that Walker Hall was acting for one of them.

Q According to your decision, he was the president of a printing company and he also held -- and no doubt purely by accident -- 427,500 shares of the company in question?



A Yes. That is an individual who has not been remotely referred to during this investigation up until to-day.

Q Do you consider him to be one of the backers or fronts? Apparently he was in that case.

A No, Hall does not sell securities.

Q No; he was an investment counsel, but he was touting a security in which this creditor was very much interested?

A Yes. In other words, he was running a tipster sheet for that individual.

Q A different kind of front. Still, that is what it was.

What do you say to the other two cases -- the Jones case and the McGill case?

A The Jones case and the McGill case are absolutely linked together in the reported decisions, the noted decisions.

Q Has any subsequent decision since August, 1949, apart from the reported decision in the Jones case, related to the same backer?

A I cannot be sure. I would be inclined to think that the Harry Price case is, but I could not prove it. It is only an opinion.



Q. I know the printing firm there was a different printing firm?

A Yes, sir.

Q But you suspect there was a connection back to the same source? Is that right?

A That is my opinion, Mr. Jolliffe.

Q When I asked you if you have anything to suggest by way of amendment to the Act or otherwise, I want to be clear about what your answer is. Do I understand that, first, you do not think that an amendment to the act would assist you in dealing with backers of fronts.

A There is a possibility that this type of amendment to the Act would have an indirect result overall, and that would be an amendment to the Act to provide that all options should be granted direct to registered dealers.

Q Without any intermediary?

A Yes.

Q That would eliminate sub-options. Is that what you suggest?

A Yes.

Q It would do away with sub-options?

A Yes, it would do away with sub-options.





Q But you would not interfere with the practice of granting options to a group of broker-dealers in association with each other?

A Oh, no, because they are exempted under the act, at any rate. If a broker-dealer took an option on a million shares, he could grant a sub-option on any part of that. It is a call, as they call it, on shares.

Q What you have in mind is an amendment to eliminate the unregistered middleman and insist on the option being granted to a registered dealer. Is that it?

A I am not exactly recommending, but I am putting out a suggestion.

Q As a possible change?

A Yes.

Q What do you mean by that? Do you want to give it further consideration before you make up your mind?

A The way I look at it is, that there are other people to be called to testify, and I think before we reach the point where any definite recommendation should be made, that the whole situation should be canvassed -- I may be a little bit canny



-- but I feel that in many cases administration and legislation should be carried out on different planes. There is a little danger of intermingling things too much.

Q Yes, quite. It is usual, I think, when legislation is being considered, to get the view and the experience of the man who has had to administer it?

A Yes.

Q Is there any other possible change in the act which you have under consideration?

A I would like to leave that.

Q I mean on this point; I do not mean generally, because generally that is rather a large order.

A Yes.

Q But, on this particular part?

A The industry might be canvassed on this idea. This occurs to me. It is merely an idea. I have not thought of the feasibility of it, or of the practicability of it, or anything else. If it was mandatory that any dealer had to handle his own mailing within his own registered address, it might eliminate some of that trouble, because printing and mailing is often interlocked.

Q That is an interesting suggestion.



It has not arisen out of your experience in some cases that the printing and mailing was handled entirely by a printing firm and passed out of the control of the broker-dealer?

A I have a suspicion that that has been done in several cases, and I think probably there is a link between the printing house and the mailing concerned. You mentioned -- this is when we are talking on the same subject, as it were, -- that it is only feasible to get a recommendation respecting legislation from the person who is dealing with the administration.

Q I said that it is usual to consult and obtain the view and the experience of the man who has charge of the administration?

A Yes. I go further than that. I say that the administrator's suggestions are really a result of canvassing the opinion of the industry, itself, the legal profession and other people who are associated with that industry.

Q Oh, I think civil servants have some influence on legislation and quite properly.

THE CHAIRMAN: I think Mr. Lennox' point is that legislation is something which does not just come



out of the mind of any one civil servant.

MR. JOLLIFFE: Quite.

THE CHAIRMAN: And any change of legislation has many effects which might cut both ways. Legislation which is going to destroy legitimate industry has to be regarded very cautiously and before Mr. Lennox would want to put himself on record as recommending any change in the Act, he would feel out the various people who are chiefly concerned in the business, and no doubt with a view to the protection of the public, because the people in the business may not have that in mind sometimes, or some of them might not have it in mind as much as Mr. Lennox does, and that he would consider very carefully whether any change would have a practical effect of accomplishing a proper purpose. I am sure his view is not that recommendations of legislation do not come from civil servants. Most legislation is prepared by the civil servants, it is considered by civil servants, and although it is not always acted on exactly <sup>in</sup> the form in which it is presented, nevertheless, in every piece of legislation, there is that advice to which the government has to turn.





MR. JOLLIFFE: To which every Government has to turn.

THE WITNESS: As a matter of fact -- and Mr. McTague can bear me out in this because it was his policy and my policy -- in all these matters it is the policy of the Commission to discuss it with the branch of the industry affected.

BY THE CHAIRMAN:

Q Yes, and for that reason you hesitate to be too dogmatic at the moment about any recommendations, and what you are suggesting as your proposal to a change is a tentative one?

A Yes.

Q Subject to further consideration and discussion?

A Yes. There are always two sides to a question. In theory my idea may be wonderful, but there might be practical considerations to upset my theories.

Q And, of course, governments do not always follow recommendations. The Government has to take the responsibility. As a matter of fact, the government has in mind, sometimes, what the Opposition



might think about it.

MR. JANES: I think the witness is getting pretty tired. Will Mr. Jolliffe be much longer?

THE WITNESS: I would like to see it through.

BY MR. HOUCK:

Q Do you find that broker-dealers are prone not to criticize the Ontario Securities Commission because of the fact you have the right to suspend or cancel their license?

A To not criticize?

Q Not to criticize you or your Commission for fear of getting in wrong with you or the Commission?

A If they are told not to, they certainly do not obey it.

Q Are they prone to criticize, or not to criticize your actions and the Ontario Securities Commission?

A The Commission is silent on that point. I never told them not to criticize the Commission. I think, Mr. Houck, it would telling the waves to roll back, to tell that organization not to criticize



the Commission.

BY MR. JANES:

Q You think that is their privilege, I suppose?

A And, as far as criticizing the Act is concerned, there is no secret. One member of the Board of Governors every time he sees me, says, "Let us eliminate the provision about delivery of prospectus." It is just his battle-cry.

BY MR. JOLLIFFE:

Q Apart from any possible change in the Act, have you any other suggestion under consideration for dealing with the specific problem of the front man and his backer?

A Not anything more than we are doing. We could intensify that.

Q Has the power to make investigation under Section 23 -- that is, the Attorney-General's power, -- ever been exercised in an endeavour to locate a back end?

A Section 23 is used in 99 cases out of 100.



BY THE CHAIRMAN:

Q For the purpose of locating a back end?

A Yes. The Section there empowering the Commission to investigate one specific complaint or specific item, is rarely used because, as I told you before, you go in to make an investigation from one approach, and you end up with half a dozen different ones.

BY MR. JOLLIFFE:

Q I appreciate that ordinarily you use Section 23 --

THE CHAIRMAN: Which is now under question in the courts.

BY MR. JOLLIFFE:

Q ---when you want an investigation to be made, but that might be for many different reasons. My question relates to an enquiry as specifically directed towards locating or establishing a back end for a front. Has it ever been used for that specific purpose?

A Yes; because in every case in which we come





out with a finding whether the front is a "front" or an independent operator, it has been an investigation under Section 23, or without the aid of an investigation order at all.

Q Is it not true that very often you are finding that a registrant was not an independent operator following an enquiry initiated for some different reason?

A Yes. Here is the sequence in the matter.

It would be only the houses which are engaging in extensive mailings and extensive telephonings which would be likely to be "fronts" and the commission is continually checking on those houses, as I said, of our own motion, over and over again, to try to control that situation and when we are investigating those people, we are investigating the people who are most likely to be "fronts", and we often come up with the finding that they are fronts.

Q Does it not also follow that if the extensive international mailings were not there, you probably would not have any fronts left?

A That is quite possible; but my conception of my duty to the public is to regulate trading in securities without unduly stifling the free flow



of venture capital, and in view of the provisions of the Act, I do not think it is within the power of any administrator to say there will not be any mailings across the border, or across the international line.

Q In conjunction with that principle, do you not also have to consider the record? If, for example, you found that international solicitation was identified almost exclusively with a group which you knew or suspected to be front men, would you not take that into account?

A Mr. Jolliffe, that is not a fact, because there are thirty-five now who have been involved in international solicitation. I do not think with any degree of fairness, that you could even surmise<sup>that</sup>/more than, at the outside, ten of them are "fronts."

Q That is your estimate of the number?

A Yes.

Q At the present time?

A Yes.

Q After recent eliminations?

A I mean, you have to have some reason.

There are supposed to be some members of our legal profession sponsors or "fronts." That is the kind of



gossip you hear. There has to be some reason for it. I would say that probably ten is the very outside figure, unless you are going to say a man is a "front" because you saw him walking down Bay Street with a promoter.

Q I know what you mean, or, because they had lunch together?

A Yes.

MR. JOLLIFFE: I have no more questions at the moment, although I would like to point out that when we have had an opportunity to look at that literature, we might want to ask Mr. Lennox some more about that.

THE CHAIRMAN: He is always subject to being recalled.

MR. JOLLIFFE: Yes.

BY MR. HOUCK:

Q Would I receive any consideration from you, or any preference, if I were to come to you with a deal and you realized I had my own money invested, which would prove to you I was confident



about the venture I wanted to promote? Would I have more preference than the fellow who would come to you as an O. P. M. or simply taking money out of one pocket and putting it in the other?

A I think you would have a preference in a negative way. I do not think it would be possible for the Commission to show any positive preference, as it were, but I think you would have a negative preference, because we would think that "This looks like a good proposition"; we would not be so suspicious in checking over. We might as well be perfectly candid. There are certain details in any matter with respect to which we put our strongest eye-glasses on in checking. That is only human nature.

BY MR. GRUMMETT:

Q When an applicant makes application for a license, are there any questions on that application concerning his financial standing, his capital, and from where it came?

A Not in the case of a salesman, but in the case of the **dealer** or broker the financial requirements are all checked by the broker-dealers. Their questionnaire is just as elaborate as ours, and if





it shows that he has met their financial requirements and if we are suspicious it is not his own money, or he is not making a full disclosure, we examine him under Section 12 of the Act.

Q Section 12. Does he have to take an affidavit at any time that moneys used are his own and not those of someone else?

A Yes. His application is verified by affidavit.

BY MR. HOUCK:

Q It is either his money or other people's money?

A Yes.

BY MR. JOLLIFFE:

Q The application covers that point about resources?

A The application is in the back of the Act.

MR. McTAGUE: Here is a sample of the application, Mr. Chairman..

BY MR. DOWNER:

Q Mr. Lennox, what percentage of the material



which is sent in by mail would be lawful and regular here, and irregular in the United States?

A       The United States hold that it is all unlawful.

Q       Irregular?

A       Yes.

Q       We had a letter from Mr. McEntire, of the S.E.C., It actually did not solve many of the problems, -- or, it did not, in fact, solve any. It gave us very little information.

Do you think it would be of advantage if you got together in some way or another, talked these things out, and were able to cross-question, perhaps, one another?

A       I doubt whether there would be much accomplished along those lines until the Federal authorities in both countries decide whether or not there is to be extradition.

THE CHAIRMAN: It is quite apparent from that letter by Mr. McEntire that extradition is the only thing they want. Apparently they are not prepared to carry on any negotiations on any other basis.

MR. GRUMMETT: In comparing this application



form submitted by Mr. McTague, with the application form on Page 517 of the Securities Act -- it is called Form No.1 -- there is more material required in the application presented by Mr. McTague.

For instance, Section 3 covers, I believe, the point I raised:

"Is any part of the capital of the applicant represented by or derived directly or indirectly from personal loans or gifts to you and any member, partner, officer, director, or any other person or company having any direct or indirect interest therein? If so, state full particulars."

(Page 2905 follows)



And it would be to your advantage to have that information in your application?

A I doubt it because the broker-dealers are responsible for auditing the affairs of their own membership and --

Q Yes; but these men are making application to you for registration.

A They are, but that job has already been covered before their registration is finalized with the Commission.

Q Yes; but if they have made a false statement in this application, that does not necessarily mean they have given false information to you.

THE CHAIRMAN: Yes; but after they become registered, they can incur indebtedness to some outside party.

MR. GRUMETT: Yes.

THE CHAIRMAN: That is what happened in the cases described. The credit is extended after they are licensed; so that nothing in the application may be false, at all, but after they are licensed, some relationship may be established which puts an outsider in control.





BY MR. GRUMMETT:

Q. You might have a continuing series of statements filed monthly, at different periods, to that effect?

A The broker-dealers are better qualified to give their own evidence, but, as I understand it, they have an annual audit and they have a snap or surprise audit over and above that.

BY MR. JOLLIFFE:

Q. Is that not what happened in the Price case?

A. No. The Commissioner could have a surprise audit.

THE CHAIRMAN: At any time -- and it does.

THE WITNESS: And that question which the broker-dealers have directed in that form is to ensure that the man in his own right has sufficient working capital to meet their requirements.

BY MR. JOLLIFFE:

Q. Yes; but we have seen where the broker-inadvertently dealer/would enjoy registration with the Commission and not be a member of the B.D.A., as one is now, as you explained yesterday. It might happen again?

A It happened by mistake that a person obtained



a registration with the Commission. If he had not obtained registration with the Commission, he would obtain a renewal registration, which is somewhat different; but now, no broker-dealer will be accepted by the Commission under the existing policy until he has met the requirements of the Broker-Dealers' Association.

Q Yes; but the renewal requires a statement of particulars as to any change in the facts set forth in the previous application.

A I do not see how that alters the question which Mr. Grummott brought up.

Q Well, it alters it in this way that if the application required a statement of particulars as to the financial backing from some other source, it might be answered quite truthfully in the application, if it were on your application form, which it is not; then on the renewal, the applicant for renewal would be obliged to state whether there has been any change in that company since the application was made. In your form, as it is under the Act, you have not this information which Mr. Grummott quoted from the Broker-Dealers' form.

THE CHAIRMAN: Is this a form under the regulations, or is it statutory?



MR. JOLLIFFE: There has to be this distinction made. In some of his decisions, Mr. Lennox has acted on the basis that the applicant withheld information which ought to have been disclosed to the Commission. That is rather different. He would be in a much weaker position if he attempted to act on information secured by the B.D.A.

THE CHAIRMAN: Except that there is an affidavit attached to this, as well. That is a more effective club than a breach of the statutory - -

MR. GRUMMETT: I do not think so.

THE WITNESS: Would it not work out, from a practical point of view, in this way, that, if the broker-dealers found out the man had sworn a false affidavit for the purpose of joining their Association, they would cancell his membership and we would automatically cancell his registration? That is the way it would work out from a practical point of view.

MR. GRUMMETT: That boils down to this, that any offence he has committed against the regulations of the B.D.A. if it were in your regulations,

would be an offence against your regulations as well.

MR. JOLLIFFE: As well.



MR. GRUMMETT: Yes.

THE WITNESS: I am not suggesting that improvements cannot be made, but this Act was revised in 1947 and I have been too busy with the highlights of the administration, in view of the new situation created by the broker-dealers and everything else to get down to all the fine points.

BY THE CHAIRMAN:

Q. At any rate, it is a matter which is worth considering?

A Yes.

Q It is a matter which is worth considering. It might be well worth considering.

BY MR. JOLLIFFE:

Q. It would not mean amending the Act?

A No.

Q It would be covered under the regulations?

A Yes.

THE CHAIRMAN: Is that all?

MR. HOUCK: I think we owe a vote of appreciation to the witness. We have had him here a long time.

MR. JOLLIFFE: Yes. I think we are very





grateful to Mr. Lennox for his patience.

MR. DOWNER: Endurance.

MR. JOLLIFFE: I hope he is not unduly exhausted; but, after some of the hearings over which he has presided, I should think this is duck soup.

THE CHAIRMAN: It is quite different, between a witness and counsel, where the witness is under oath.

MR. DOWNER: Mr. Chairman, it is now ten minutes of five. It is rather late to start another witness.

THE CHAIRMAN: We will resume at nine o'clock in the morning. I think it would be rather foolish to open up another subject at this very late hour. I am very sorry to keep you waiting, Mr. McTague, but we did not know it would take as long as it has.

THE WITNESS: I wish to thank you, gentlemen.

---The witness retired.

---The further proceedings of this Committee adjourned at 4.50 o'clock, P.M., August 23, 1951, to resume at 9.00 o'clock, A.M., August 24, 1951.

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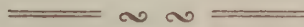








PROCEEDINGS  
of the  
SELECT COMMITTEE OF THE  
ONTARIO LEGISLATIVE ASSEMBLY  
APPOINTED TO ENQUIRE INTO AND REPORT  
UPON CERTAIN MATTERS CONCERNING THE  
ADMINISTRATION OF JUSTICE IN THE PROV-  
INCE OF ONTARIO.



Vol. 20.

Friday, August 24, 1951.



T W E N T I E T H     D A Y

Toronto, Ontario,  
Friday, August 24th, 1951,  
9.00 o'clock A.M.

- - - - -

The further proceedings of this Committee reconvened pursuant to adjournment.

All parties present.

Same appearances as heretofore noted.

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THE CHAIRMAN: Gentlemen, we will now come to order. Are we ready to proceed this morning with the Broker-Dealers' Association?

MR. JOLLIFFE: Yes.

THE CHAIRMAN: Nothing further anyone wishes to bring up before we go on?

Mr. McTague, you represent the Broker-Dealers?

A That is right.

THE CHAIRMAN: Do you wish to make a statement yourself?

MR. McTAGUE: I thought I might be of some help to the Committee in that way, because naturally I was





in on the birth of the Broker-Dealers, and so on, and perhaps that dove-tails into the activities in which I was engaged when I was with the Securities Commission, and I am ready to answer any questions.

THE CHAIRMAN: I think it would be helpful to the Committee if you were sworn as a witness, and gave any information you have, as to the history of the Association.

MR. McTAGUE: I think that Mr. Wismer, who is the permanent manager of the Broker-Dealers' Association, could give the evidence from the record<sup>of</sup> just what was done, and that I might be of help to him.

THE CHAIRMAN: That will be in order. That is following the same procedure as we did with the Bell Telephone Company and others.

CHARLES P. McTAGUE,

A witness being called and duly sworn testifies as follows:

BY THE CHAIRMAN:

Q. Now, Mr. McTague, you at the present time, are engaged in the practice of law in Toronto?

A That is right.



Q. You act as counsel for the Broker-Dealers' Association?

A That is right, sir. I am on retainer with the Broker-Dealers' Association.

Q You are not connected with them in any full-time capacity?

A No.

Q They are only your clients?

A Yes.

Q You were, for a time, the Securities Commissioner for Ontario?

A Yes, for substantially three years; from October, 1945, to the end of June, 1948.

Q And during that time, the Statute which set up the Broker-Dealers' Association was introduced into the Legislature and passed?

A That is right.

Q And you had probably a good deal to do with the recommendations upon which that Legislation was based?

A Yes sir, that is right.

Q I do not think it would be very useful for me to ask a number of detailed questions in a sort of examination in chief. I think perhaps from this point on, you might be prepared to give us general statements



as to the purposes you had in mind for the organization of this Association, and the powers which were given them, and your whole conception of the Broker-Dealers' Association as an integral part in the regulation of the securities business.

A I should be very glad to try and do that, Mr. Chairman.

When I/<sup>was</sup>first appointed to the Securities Commission, my appointment was as Securities Commissioner, which was under the old Act of 1937. The 1945 Act had not been proclaimed, but it was only a matter of perhaps two or three weeks when it was proclaimed, and I was designated as Chairman of the Commission, under the new 1945 Act.

I had nothing to do with the preparation of that Act. There had been a Commission, known as the Urguhart Commission, which had made a fairly thorough-going study of conditions in the securities business, particularly in so far as it related to the mining end of it. I think my friend, Mr. Jolliffe, can vouch for the fact that during that time I was in Ottawa on the National Labour Board, where we used to see quite a bit of one another.

MR. JOLLIFFE: Yes, that is right.



THE WITNESS: The Commission, I would say, was in a badly disorganized state when I took it over, but I was very fortunate in that it was just at the time when the boys were coming back from the armed forces, in October and November of 1945, and I was able to create an organization centred around people of that type, people, who, in the main, had served overseas and were on their way back.

Among them was Mr. Wismer, who is associated with me now, and Mr. Cameron, whom I see here, was another one. There were quite a number of them.

That Act of 1945 contained a provision giving the Commission the power to review the activities of people who were engaged in the security business, the idea being apparently that the new Commission, in spite of the fact that a man had been registered, the matter could be reviewed and if it was deemed in the public interest, there was another Section which provided that he should lose his registration or license, and that was it.

A greater part of the work in my regime consisted of reviews of registrations to a large extent.

But naturally, at that same time -- during that period -- one had to examine into the difficulties





which had presented themselves in the securities business. I think members of the Committee may recall that prior to the time of my appointment to the Commission, there had been quite a vigorous campaign about the so-called "stockateering" -- as it is still called -- in the United States, and some of our journals here had entered into that, and also a great deal of that had emanated from the States, and naturally it was a problem which had to be faced.

I should like to make it very plain that I had the same "philosophy," as I would call it, and policy which Mr. Lennox expressed yesterday that he himself had, namely, that the job <sup>of</sup> administering the securities business in Ontario, is one that involves not only the matter of restraining people from doing certain things, but it is very much concerned, in my opinion, with the encouragement of obtaining risk capital for the development of our natural resources here. That involves, in my opinion, naturally, the obtaining of money where you can obtain it. I am not suggesting that it be by bootleg methods or fraudulent methods or anything of that kind, but I think that is sine qua non in a planned economy, such as we have here.

Taking that basic proposition, then I think you have to give some consideration -- and I



am going to try and clear the air a bit from the point of view of the difficulties which are involved in regulating people and regulating the methods, and so on, which are employed in selling securities internationally or inter-provincially--and in my opinion -- and I have given this opinion in writing; I was asked for it at one time by the Securities and Exchange Commission --

BY THE CHAIRMAN:

Q. That is in Washington?

A In Washington, yes sir. I am of the opinion that the sale of products, what we call "trade and commerce" of an inter-provincial kind, and of an international kind, is primarily within the jurisdiction of the Dominion government. I think that is a sound proposition. Mr. Wismer may have a copy of the opinion I gave at one time.

It has come up in the Marketing Protection Act and so forth, where the marketing body, an agent of the Provincial government, had undertaken to fix prices, and that sort of thing, and define the methods by which national products can be sold. And there is a British Columbia case where they tried to discipline, as their Act purports to give them the right to do, a grower who was selling in Oregon, selling outside of British Columbia, and it was held that a Provincial government



had no power under a statute to attempt to regulate what was, in effect, in that case, trade and commerce into another jurisdiction -- international trading.

There are a number of cases. There is the National Products Marketing Act case, which is a British Columbia case, found in 1936 Supreme Court reports and so on.

I want to put this proposition to you, that although that is my opinion as to the constitutionality of the matter, I am guilty to this extent in connection with one Section of the present Act, which purports to prohibit telephoning in connection with sales inside or outside of Ontario. I do not think we could do anything about it by way of enforcement, except we could take licenses away. That is a sanction which exists in the Act, namely that where it is deemed in the public interest to take away a registration because somebody is not acting in what the Commission deems to be in the public interest, you can get at it in that way.

I would be quite strongly inclined to the view that if a prosecution is taken in connection with a phone call outside of the Province of Ontario, it would not succeed.

I think that is pretty much in line with the



decisions to which I have made reference. There are several of them, as far as that is concerned.

But <sup>it is</sup> when it comes to administering a provincial statute, and within its confines, try to regulate <sup>trade</sup> inter-provincially and internationally, that you are always in a bit of difficulty, and although, in my opinion, under the circumstances, the job is being very adequately done at the present time by the Commission, under the Chairmanship of Mr. Lennox, there are difficulties.

Then there are certain other things which came to my attention fairly soon after taking over the Chairmanship of the Securities Commission. One was that the Street was divided, in a way, into three sections. There was the Toronto Stock Exchange.

The Toronto Stock Exchange, if my memory is correct, was incorporated by <sup>an</sup> Act of the legislature here, about 1878, so that it has had a very old history, and a long experience in connection with the disciplining of its own members and so on.

Then there was the Investment Dealers Association. The Investment Dealers Association has been in existence for fifty years. It was formerly the Investment Banking Association. It had largely to do -- the business of its members -- with the sale of municipal and industrial





bonds, government bonds, and so forth, preferred stock, originating issues in industrials and so on. They did very, very little in the mining field although there were some houses connected with them, like Nesbit-Thompson, who have done some very constructive work along that line.

Then you had the rest of the Street which in my time, at the beginning, I would describe as something in the nature of a "jungle". You had to deal with each section separately. They set their own price spreads; what they would buy stocks for; what they would option them at, and so forth. I can recall instances where stock was being taken down from companies at 5¢ and 7¢, and being offered to the public at 90¢.

Then there were so many cases, quite evident in that period, where you would have people who would start to finance an operation and bring in a mine, we will say, and they would get stock very cheaply and sell it at a good profit. When I came in there, they were entitled, under the rule the Commission had made, to draw down one vendor's share for every share that was sold, so the vendors' shares were out, and the temptation naturally was to get the money out, and <sup>then</sup> they proceeded to forget the property, and the



shareholders were not getting any "run for their money".

Of course, it is probably natural for me, as it would be for some members of the Committee, having been a member of a profession which <sup>is</sup> charged with its own discipline -- I am referring to the legal profession -- and of course, I had something to do with some of the others, like the professional engineers and others -- to think that while it might take a little time, if we were going to tackle this problem in a constructive way, having in mind what I have already referred to, such as the handicaps which exist constitutionally, and so forth, the thing to do was to try and get that unorganized section of the Street organized.

I will be quite frank with you, and say that I went to my Minister at the time, the then Attorney General and outlined my views, and put the proposition to him, and went from him to the Premier, and I did take it that I had authorization to go out and try and convince this body on the Street entirely unorganized, that it was in their interest to organize, that they had to take hold of their own situation, and become a constructive body for the discipline of themselves in a way similiar to that of the Toronto Stock Exchange and the I.D.A.

I conducted numerous meetings, called the



Stock Exchange and the I.D.A. into the picture, and they were very helpful. As a matter of fact, it was my opinion that those houses on the Toronto Stock Exchange, which engaged in primary distribution were not simply selling as brokers on the Exchange itself, but they should become members of the Broker-Dealers' Association, and they did. I think there are some twenty-eight firms now on the Toronto Stock Exchange which also belong to the Broker-Dealers' Association, and on the Board of Governors, there are three representing the Stock Exchange, and my own personal theory was, that these people belonged to something in the nature of what you might call a profession which was accustomed to handling discipline and regulating the business and they would be a very important and constructive factor in connection with the government of the Broker-Dealers' Association, and it is my conviction that they have been.

Well, there were such things as the literature which was going out, and so on. There was not any check nor control nor perusal of it. The Commission, at one time -- before my time -- did peruse the literature. I think it was Mr. Beeres.

MR. JOLLIFFE: Beere.



THE WITNESS: Yes, Mr. Beere. He did that job for some time, but as I understand it, it was considered that was objectionable in that people got the impression that there was something in the nature of the stamp of government approval on it, in view of the fact that a government agency was checking it, and something had to be done, I thought, about that.

Then there was the matter of audit. We, of course, at the Commission, had the power of auditing any house as far as that is concerned, and still have, in that connection.

I would like to emphasize this to you, gentlemen, that the enactment of the Broker-Dealers' Act, did not take away any powers of the Commission at all. It was never intended it should. The powers of the Commission remained the same as they were. It was hoped that the Broker-Dealers' Association would be an arm which would work along with the Commission, just as the Stock Exchange and the I.D.A. had been working, in so far as that is concerned.

In what I call "the early days" -- although it is relative; the days when I was there -- another very serious problem arose and that was the problem of salesmen switching almost at will. It is true the Commission had to approve the transfer, but they were





switching almost at will from one house to another, and that created a bad situation, and it seemed to promote a certain degree -- perhaps a large degree -- of irresponsibility on the part of salesmen who were just jumping from one place to another. If some dealer had a good deal which, in the parlance of the Street, was "hot" at the time, and they were able to sell, when it began to cool off the salesmen left and looked for another "hot" deal. That was the way it was working, with no control, and no understanding amongst the people on the Street.

Another matter -- and a very important matter -- in which I consider great progress has been made, was in the matter of building up treasuries of companies. As I say, there had been a tendency when they used to refer to the "moose pastures" --

MR. GRUMMETT: They still do.

THE WITNESS: Not nearly as much, Mr. Grummett.

The "moose pastures", if you want to get it down to a refinement of what it meant, was a piece of land picked out and staked, and someone would incorporate and start to sell stock, and they would sell enough stock at enough profit, and draw down the vendors shares to which I have referred, and then the property



was left to the moose, and that was that.

MR. JOLLIFFE: The moose got it back anyway.

MR. GRUMMETT: The moose had it all the time.

People never made use of it.

THE WITNESS: I am quite sure if an examination were made of statistics today in that regard, you would find a tremendous improvement in that respect, over a comparatively short period of time. I will leave it to Mr. Wisner to state just what steps the Broker-Dealers' Association, as such, has taken to help the Commission in the work, and I do think that the results are pretty obvious, that there is a vastly different viewpoint.

All this has to do, I think, sufficiently with the Broker-Dealers' Association, and at the same time, with another problem which has been before you for consideration, so that it is relevant for me to speak to you about it in the position I am in, from the point of view of the Broker-Dealers' Association, and naturally, also, to make reference to it as I found it in the capacity I was in as Chairman of the Securities Commission for three years.

It was very obvious that there was a difficult situation, as far as the Securities and Exchange Commission in the United States was concerned, and not



only with them, but with the various State Commissions. I hope you realize and appreciate perhaps, the importance of the situation which exists on this Continent in respect to securities sales.

You have forty-eight Commissions in the United States; there are forty-seven State Commissions, and then the Securities and Exchange Commission. Nevada has not got one.

We have nine securities Commissions here in Canada. I do not think Newfoundland has one, and -- this is perhaps rather a guess on my part -- but I think perhaps they have something of the same technique and some of the same provisions in their companies' Act as are to be found in the Insurance Companies' Act, where there is not a separate securities Act.

Now, there has been a great deal of publicity which was adverse to Toronto, Ontario, and Bay Street, and, of course, one had to try and find out how one might be helpful in connection with that situation.

I have met the Chairmen of the Securities and Exchange Commission on many occasions. I knew them all during my regime here, there was first Mr. Purcell, Mr. McCaffrey, Mr. Hanrahan, and at the present time, Mr. McDonald.

At any rate, I met them at meetings of the



security administration, and I have made trips to Philadelphia while they were still there and I have also made trips to Washington. I discussed this problem on different occasions with them to try and find out what we could do here to co-operate in their problems, and how we could be of help.

Now, I found them very fine people, and I am not only speaking about the Chairman, because I knew him, but also the other officers of the Securities and Exchange Commission. I found that even at that time there was only one thing in their minds and that was the matter of extradition.

When I first came into this picture, there had been a Treaty signed between the Dominion government and the government of the United States with respect to extradition, and although it was my opinion as a lawyer, at the time, that it was a horrible kind of business, putting people who could hardly be said to be in the field of crime by the longest stretch of the imagination, into difficulty in that regard, I took no position in respect of it at all. I did not make a representation and I did not make a comment of any kind, and the matter came up before a committee in Ottawa, and there it died, as far as I know. It did not come into being anyhow.





BY MR. JOLLIFFE:

Q. I think it was withdrawn, Mr. McTague.

A I believe it was.

Hansard shows the statement by the then Minister of Justice, who is now the Prime Minister, explaining that it was withdrawn.

THE CHAIRMAN: The agreement was evidently signed but never ratified.

MR. JOLLIFFE: The Bill was withdrawn.

THE WITNESS: That is right.

As I say, the whole burden of opinion was that everything would be cleared up if extradition came in. And the only time I ever made any comment on it, up to the present time, was when I was asked in Washington "What about it?", and at that time I told them very frankly that in my opinion they were asking too much; that they were introducing elements to extradition which had never been dreamed of, and that they had a perfect right to get some form of extradition, but in my opinion they would never "get by" over here until they modified their views a great deal, and put in a basis where you had a crime in both countries, which was recognized by both, and until you got to that fundamental proposition, there was no use in going any



further with it.

BY THE CHAIRMAN:

Q. Are you in a position to elaborate a little more fully on the sort of offences that extradition Treaty covered?

A Yes, I think so. But I can only do it from the document in front of me.

Q Is that (indicating) a draft of the Treaty?

A This (indicating) is a Treaty for extradition of criminals between Canada and the United States signed at Washington, April 22nd, 1942.

Q That is the Treaty you have mentioned?

A That is right, yes.

Q I think we should have<sup>a</sup> copy of that.

A We have it here to file with you. It is very long, as far as that is concerned.

THE CHAIRMAN: Have we a copy in the Securities Commission?

MR. CAMERON: No sir, there is one in the legislative library.

THE WITNESS: I have one here (indicating). What we could do, gentlemen, if you concur, is to have seven copies of this document run off and furnish each



member of the Committee with one.

THE CHAIRMAN: I think it would be useful as an Exhibit, because there has been a great deal of discussion on extradition, and the obstacles, and so on, not only here, but in the press, and I think we should know exactly what was involved.

MR. GRUMMETT: I think we should have eight or nine copies, because each member of the Committee will want one, and Mr. Vickers will want one for filing.

THE WITNESS: I have before me a brief which was presented to the Parliamentary Committee in Ottawa in respect of the proposed Treaty <sup>which</sup> / was put forward at that time by the securities dealers here.

I should mention that there has been an organization in what I called this "organized group", which was known as the Ontario Securities Dealers' Association, a voluntary association, before the Broker-Dealers' Association came into being, but it has broken up.

Somebody here was talking about "factions" yesterday. There really were factions in the Ontario Securities Dealers' Association, and admittedly by the people on the Street, they ~~were~~ not effective at all. I mention it because it is in the brief which is before



me, and this outlines the objections which were taken by the Street at that time and I suppose successfully, because, at any rate, the Bill was withdrawn, but I do not know whether this was the only one. I do not suppose we have any more copies.

MR. WISMER: I can get a few more.

THE WITNESS: If you do that, it will outline the attitude of the Street toward the Treaty.

Going on from there; as I say, that was all that was suggested at any time. During my time as Chairman of the Ontario Securities Commission, in spite of definite invitations being given to the S.E.C. to furnish particulars of offences which they claimed were being committed wholesale, I never received any. There was none received in the Commission, in my time -- in three years, and, as I say, they were invited.

The only record I remember finding in that respect in the Commission was one which had to do with some particulars which were given accompanied by affidavits, regarding a situation in Detroit, and the then Commissioner, as I recall from the files, Mr. Whitehead, went down and examined these people, and came to the conclusion that the affidavits could not possibly set out what had occurred, so no action was





taken. I speak from memory there, but I think the record will establish that.

During my time, no cases were brought up -- nothing whatever.

Then, after leaving the Commission, I appeared before the Securities and Exchange Commission in Washington, in October of 1949, as Counsel for the Broker-Dealers' Association, and at that time I made certain definite proposals to them, namely, that they might extend the effect of what I think was called "regulation 'A'" -- Mr. Wismer will have the document -- which did exempt from filing in the long form, securities up to \$300,000.; that is, they were exempt from a long form having to be filed, and the attendant long delays which happened there, and so on.

We made that proposal at the time and suggested that there might be a regulation "B" which could extend <sup>it,</sup> on the same basis as they did to their own people, to the Canadian mines. It was my theory and conviction at that time that was entirely in accord with pronouncements which had been made by President Truman, as to the desirability of American capital being invested in countries which were in alliance with the "free world", as we call it.

We had a very nice hearing. It lasted all one



morning. There were quite a number of questions asked in connection with the problem. It was as a result of that, that I was asked for the opinion to which I have already referred, in connection with it.

It was a little bit depressing, in a way, to find out that at the very time these discussions were going on, representations were being made, that some of the S.E.C. group were moving for mail fraud orders and fictitious orders, which subsequently bore fruit at a little later date, in the way of mail stoppages in Ottawa.

I know, as far<sup>as</sup>/the Broker-Dealers' Association was concerned, we asked to have particulars given to us of what was said over the telephone and what the complaints were about, to give us a chance to deal with them as a disciplinary matter. We were assured that these records would be sent to us, and that the Association would have an opportunity to deal with the people who used the telephones, and who were alleged to have used high-pressure and false statements and one thing and another like that.

In spite of that assurance, there has not been one single thing come to the Broker-Dealers Association in answer to their offer to be helpful in that regard, in the way of discipline.



Now I know -- and I believe everybody else knows; certainly the members of the Committee here -- that this telephoning business is about the hardest thing and the most difficult thing to prove.

(PAGE 2935 FOLLOWS)



These salesmen feel there is not going to be any record kept over the telephone, and if the person at the other end says that they said something, they can deny it. But that does not create an impossible situation. It is covered, as far as the Broker-Dealers' Association is concerned, in their code on "ethical conduct", and I reasonably believe and I have no doubt, but that these situations could be taken care of.

Literature is not the big difficulty to-day; it is this phone business. Although it has always seemed to be talked about, a very significant thing in connection with these wholesale generalities which are made about fraud and all the rest of it, that I do not know of a case which has been proceeded with in our courts -- and I am speaking about recovery in civil actions of fraud -- against anybody on the street, either here or in any other jurisdiction, and it always has seemed to me that surely the people who are being defrauded -- if anybody is being defrauded in the true sense of the word -- must have sufficient means -- at least some of them -- so they could seek a remedy in the courts on the basis of establishing civil fraud.





The last case I remember in connection with that is the case of Piggott and company, the Construction people, against Nesbit-Thompson company, and that was probably eight or nine years ago.

I do not recall any cases here --

BY THE CHAIRMAN:

Q That was not a broker-dealers' case?

A No, it was not.

BY MR. JOLLIFFE:

Q Did that relate to telephone calls?

A No, it was a straight case of fraud.

BY THE CHAIRMAN:

Q It was in connection with some bond issue.

A Misrepresentation in respect to a bond issue, yes.

BY MR. JOLLIFFE:

Q I remember the case. It is not very often that any litigation is based on the evidence of telephone calls, for obvious reasons?

A That is right, and there is nothing I know of



which will prevent anybody from bringing a case for a fraud alleged to be committed over the telephone. It is a question of who will be believed; that is all.

MR. GRUMMETT: There is very little use in presenting it.

BY THE CHAIRMAN:

Q On the other hand, if they do not proceed with the civil action, you would think there would be out of this very large -- at least alleged --- mass of so-called fraudulent transactions that some specific instance would be laid before some Securities Commission.

A Oh, yes, I would think so.

Q There seems to be an amazing lack of any specific instances which have been laid before this Securities Commission.

A I do not know what transpired in Mr. Lennox' time; I can only tell you what transpired in my time. I did not receive any, at any time.

I think, gentlemen, I might try to sum up as far as the Broker-Dealers' Association is concerned by saying that it was established somewhere about



December of 1945. In fact, I had not been with the Commission very long when the first draft was made. Mr. Wismer was doing the hard work at that time.

Eventually I felt that the Securities Act had to be brought in line with that change in viewpoint, and change in philosophy, and that was done, too.

I might say that in connection with both Acts, there was consultation with the I.D.A., there was consultation with the Governors of the Stock Exchange; there was consultation with representative people from the unorganized part of the street; there was consultation with lawyers who specialized in industrial issues -- those who specialized in mining -- there was consultation with the Institute of Chartered Accountants, which had a whirl at it officially, the Association of the Society of Professional Engineers, and eventually out of that type of concerted effort, these two Acts came into being, although I am not claiming, of course, that the accountants and engineers had so much to do with the Broker-Dealers' Act. They did have with the Securities Act. And they were aware of the other Act, as far as that goes.



So you have this Broker-Dealers' Association founded.

The thinking, or philosophy, or policy back of the idea was that it might take a little time, but if we permitted them to become organized, and take hold of disciplinary matters, it would be a healthy move, and it would work out. I think if some of you are interested -- I am not sure whether it is out yet, but I think it probably is -- there is a new work on security legislation right across the country, written by the Chief Counsel for the S.E.C., that is, Mr. Lewis Loss, who is a good friend of mine, and I think you will find this theory and policy commented upon favourably there. I know it has been commented on favourably in some of the faculties in some of the leading universities in the United States, because when I was here, I exchanged correspondence with them.

BY MR. JOLLIFFE:

Q What is the name of that book?

A I have forgotten the name of it. As a matter of fact, I have corresponded with them, and it was in the process of being written. It must be out by now, I think. It was supposed to be by





this time.

I think it is entitled "Securities Legislation". If there is anything additional to the name, I do not recall exactly what it is, but it covers securities legislation across the whole world.

Q Including Canada?

A I presume it takes in all of Canada. I know it takes in Ontario, and I have gone to the point of locating some of the statutes, since the references were made in Mr. Loss's book to specific cases.

I think perhaps that is all I can usefully say with respect to the birth of the Broker-Dealers' Association, and the ideas which were behind it. As to what it has actually done, Mr. Wismer can pick up from that point. As I said at the beginning I am very glad to submit myself to any questions which any members of the Committee may want to ask about the matter.

THE CHAIRMAN: Gentlemen, are there any questions?

BY MR. JOLLIFFE:

Q That is about the birth of the B.D.A.?



A I do not care if you want to go back to my time as Securities Commissioner. I would be glad to go into that, too.

MR. JOLLIFFE: It may be more orderly to discuss first the origin of the B.D.A.

MR. HOUCK: Before we get into that, may I ask this question?

BY MR. HOUCK:

Q Will you tell us your own personal feeling about extradition?

MR. GRUMETT: I think he has.

THE WITNESS: I do not think anybody can fairly complain about the principle of extradition, be it securities dealers, or who it is, just so long as it is founded on a traditional basis of what constitutes real crime, recognized on the part of both sides to the treaty.

I mean that some people have queer definitions for "fraud" and you will get some beauties, I can tell you, if you want to pick up some of the statutes constituting state commissions, and there



are some pretty good ones in the S.E.C., too, as far as that is concerned. For instance, it is "Fraud" to sell a security which has not been registered. If my recollection is correct, in the State of Michigan, it is a fraud to do anything contrary to the provisions of the Act, and to do anything contrary to what is contained in the regulations, or which may hereafter be contained in the regulations, and so on. You just cannot go for that. After all, fraud is not a hazy thing legally. It has been pretty well defined and outlined in definite cases; the judges made laws in the civil field, such as in the case of Derry and Peake, and in the criminal field, it is pretty clearly set out in the Code.

I suppose if it is a proper kind of treaty which applies in the same way that extradition does to murder, rape, robbery and arson, and various other things, nobody would have any objection in principle, but when you try to stretch it so as to create new crimes of a kind which are not recognized, I suggest, in my opinion, that is drawing too long a bow. It is not the place to do it.

BY MR. GRUMMETT:

Q Mr. McTague, all crimes at one time had



to be established by the common law, or by statute, had they not?

A Oh, yes.

Q You have to distinguish between right and wrong, either by statute or by common law?

A That is right.

Q And the dealing in securities is **new yet**, and we should recognize the fact that there can be crimes committed in dealing in securities, and we ought to give consideration to other jurisdictions, which may have pretty strong opinions on matters of that kind.

A Not so new. As a matter of fact, the London Stock Exchange which came originally from the sales which used to take place on Change Alley, were done in the 13th Century.

Q You are not going to compare stock dealing in Great Britain with what is going on in Canada and the United States to-day?

A There are certain definite principles involved. As a matter of fact, the British Companies Act is not so different in its prospectus requirements from our own Securities Act here. It is founded on very much the same principle.





Granted the precedent for some of our provisions was obtained from the British administration.

However, if you are asking me, do I take objection to the creation to new crimes? If that is the question, the answer is, "Emphatically, no." What I am suggesting to you is this, that that is a matter singularly and peculiarly within the jurisdiction of the Dominion Government.

BY THE CHAIRMAN:

Q. Is not the first consideration this; that any extradition treaty should only extend to clearly-defined crimes which are common to both jurisdictions?

A I think so.

Q There must be a clear definition?

A Yes.

Q And it must be equally recognized in both countries?

A Yes.

Q And the objection to the treaty which was signed but not ratified a few years ago was that it went much further than that?

A That's right.

Q And it included many offences in various



American jurisdictions which might not by the greatest stretch of the imagination, even be offences under any statute in the Dominion of Canada?

A Yes. Just as an example, I think that treaty provided for extradition in the case of bankruptcy.

BY MR. JOLLIFFE:

Q Is that so?

A I think so.

MR. GRUMMETT: There can be fraud in bankruptcy, too.

THE CHAIRMAN: But not necessarily. If there is fraud, it is fraud, and fraud is clearly defined by the Criminal Code. If the Criminal Code should be amended to include certain types of offences which are not now described as "fraud", to make them "fraud", the Federal Parliament has power to do that, but to say that because a man goes into bankruptcy there is some fraud, is rather extreme.

MR. GRUMMETT: They may have been discussing some offences of fraud in bankruptcy proceedings, or something leading up to them.



THE WITNESS: Here is it:

"Crimes and offences against the bankruptcy laws. Crimes and offences against the laws for the prevention of loss concerning the purchase and sale of securities."

That means, in my humble way of looking at it, anything that is contained in the law in either country --

THE CHAIRMAN: An offence might be a matter highly technical, but a trivial matter.

THE WITNESS: That is right.

MR. JOLLIFFE: I think one of the most serious objections to it was that class of offences are hardly ascertainable.

THE CHAIRMAN: But they might change?

THE WITNESS: You would need the facilities of a whole faculty of law at a university to find out what the offences were.

THE CHAIRMAN: But the offences might change from year to year in various jurisdictions, and no



man would know where he stood, or have any way of finding out where he stood.

BY MR. JOLLIFFE:

Q Mr. McTague, I wonder if you would agree with the way it was put by Mr. Justice Hawson in the Lamar case --

A I would not likely agree.

MR. GRUMMETT: Was that case upheld on appeal?

BY MR. JOLLIFFE:

Q Yes, this does not relate merely to the Lamar case. This is an explanation of the essential requirements, and he says:

"It is necessary to entitle the demanding country for extradition of an accused, to establish by evidence:

(1) that the alleged crime is a crime  
within the United States of America,  
and

(2) is a crime within the Extradition Act."

--The Canadian Extradition Act.





"(3) within the Extradition Treaty.

(4) that there is such evidence of criminality before the learned judge as if the crime had been committed in Canada would, according to the Canadian law, have justified the committal of the accused for trial."

And then he cites four cases as authorities.

Those four propositions seem to be correct and indisputable, do they not?

A I would say that, generally. I do not know about number 4, that it has to be of a kind or character which would warrant a committal for trial over here.

Of course, the procedure naturally would be in Ontario, and I think it usually comes before a county court judge, and you have a case where extradition is resisted very strongly, and you have to prove your case. I think I would perhaps accept those four propositions as basic.

Q Yes, but if the Extradition Act was amended and the Extradition Treaty was amended, those four propositions would still stand, possibly with the



qualification you have just stated.

A Yes, and I would be inclined, too, to think, Mr. Jolliffe that at this stage there would be nothing new about it. It might involve some amendments to the Criminal Code, too, on Mr. Grummett's proposition.

Q Possibly so, and the next point is this; that apart from the question of fraud, is it not correct that the laws of the United States respecting securities and the laws of eight Canadian provinces -- nine perhaps -- with respect to securities, have this in common, that they require the registration of securities before their sale to the public?

A Well, now, that is a pretty broad proposition to ask me to admit. That does not appear in the State of Maine, for instance -- that is a question of licensing --

Q I referred to the laws of the United States.

A What laws are you referring to? Are you referring to the S.E.C.?

Q That is one of the laws of the United States?

A Yes.

Q I appreciate that the requirements of the various states are different, that there is great



variation.

A Yes.

Q In some it is a mere formality to get registration?

A Yes. I think, further, in the Canadian provinces they are pretty much based on the Ontario Statute of 1937, except that in the province of Quebec, there have been quite a number of new and different features introduced by way of amendment in one way or another.

Q The point is this; generally speaking, -- although you may feel it is too general -- securities cannot be offered to the public, primary distributions at any rate -- in either the United States or Canada, without some form of clearance from a Securities Commission of some kind?

A I think that is basically true. I think there are exceptions, Mr. Jolliffe. Some of the statutes do not require that.

We have had, exceptions, for instance, like this.

We have had securities which have been qualified, as they say -- it is rather a loose word; we say, "Accepted for filing" -- which have been qualified



by the S.E.C., and when I was at the Commission, we have given qualification almost automatically, I mean, after examining their documents, and so on. This conforms in principle pretty much with ours. The philosophy is, "full, plain and true disclosure". We have done that, and those securities have been stopped; they are not permitted to be traded in, in Michigan and Ohio.

The case, if you want to make reference to it, is the Kaiser-Fraser in Michigan and Ohio -- I am quite sure both of them -- where the Commissions in Michigan and Ohio simply said, "We will not accept them", so that what you say, <sup>is</sup> /I think, pretty well recognized in most of the states.

I do not think the New York Act, as I recall it, requires qualification of issues. It is primarily a fraud act. I do not think Delaware does; I do not think Maine does.

I mean to say, there are exceptions.

Q I know the requirements differ considerably.

A Yes.

Q But the point is this; there is the common principle in both countries, namely, that the unrestricted offering of securities is no longer





permitted.

A Well, now, let us get down to cases, before you ask me for a broad, general admission along that line.

Q I do not see how there can be any question about it, Mr. McTague. I will put it in a different way if you like it better --

A I would like to put it this way, from the point of view of Ontario. What power has Ontario to forbid trading in securities of an inter-provincial or international kind? That is the root of the matter.

Q That is another question, and I think perhaps a very important one, but it does not solve this question which can be put perhaps in a negative way. We do not have here a species of offences which is known in one country, but unknown in the other? It is not that kind of an offence.

A That depends on what you mean by "offence". You can use the word "offence" with respect to the penalty provisions in a provincial statute, which has no relation to the trouble with extradition about which you are asking, or anything of that kind.

If you are talking generally about the



principle of comity of nations, that you should do the best you can, I will agree most wholeheartedly with you.

Q           We do not have a situation in which the United States of America requires the filing of registration of securities issues while in Canada that requirement is unknown. It is not that sort of a situation.

A           Certainly it is not unknown. I will agree with that. But you cannot put the two propositions together. If you are talking about the Federal Act in the United States -- the S.E.C. -- and relating it to Ontario, which is a Provincial statute, there is no basis for drawing any inference in respect to that. It cannot be done.

Q           All we get to, Mr. McTague, is that in this country some matters have been held to be within the provincial jurisdiction, and in the United States they may be arranged slightly differently; they may be in the Federal jurisdiction, as well, and vice versa.

A           Yes, that is true.

Q           After you get through with your allegations of constitutional powers, you still have the situation



that some things are the subject~~ct~~/matter of legislation in one country, but not in the other, and there are other matters which are the subject of legislation in both countries, and securities matters happens to be the subject of legislation in both countries.

BY THE CHAIRMAN:

Q Yes, different types of legislation.

A That is a principle of international law.

BY MR. JOLLIFFE:

Q I am not stating any principle of international law, but I am trying to get your comment, and it is a fact that there is securities legislation in both countries that is not unique to Canada or unique to the United States.

A I will answer that question this way; generally speaking, that is right. But the statutes of the kind the S.E.C. follows, and related statutes, are unique to the United States. We have nothing to compare with them in Canada.

Q Mr. Lennox made the statement that in principle the U.S. Act is the same as our Act?

A I have no doubt about that, but the one is



federal and the other is provincial, and when you get into the field of crime, or of what is right or wrong, it is exclusively within the jurisdiction of the Dominion Government.

Q And the Privy Council has held that a Federal Act is ultra vires in the province?

A Yes.

Q Leaving the legislation, Mr. McTague, whether it is passed by federal authority or provincial authority, or state legislation, it is still legislation.

A I do not dispute that.

BY THE CHAIRMAN:

Q The provincial Securities Act does not in any sense endanger the scope of the definition of crime?

A No.

Q "Crime" and "fraud" regarded as crime, are entirely federal matters?

A Yes.

Q And can only be dealt with by the Federal Parliament, and any offences which may be imposed under provincial statutes are not "crimes"; they





are offences against some provincial statute.

MR. JOLLIFFE: That is perfectly correct. That is why I prefaced my remarks by saying that quite apart from the question of fraud -- fraud, entirely aside -- we have something in common in our jurisdiction in this province, and that is both Canada and the United States have undertaken to legislate with respect to securities.

THE CHAIRMAN: I imagine that is true.

MR. JOLLIFFE: And they have both undertaken to restrict the sale of securities without some form of filing or registration with a Government agency? That is common to both countries?

A It is partly common, I do not agree that it is entirely common.

Q I have not drawn any inference. I think I gather, Mr. McTague, that you think I perhaps--

A Well, I am a little bit suspicious of you.

THE CHAIRMAN: Do you think we should adjourn for five minutes at this point?

MR. GRUMETT: To relieve the suspicion.



THE CHAIRMAN: To let the suspicion cool off, yes.

---Whereupon a short recess was had.

---Upon resuming.

THE CHAIRMAN: Gentlemen, shall we proceed?

BY MR. JOLLIFFE:

Q Mr. McTague, on the fourth proposition by Mr. Justice Howson, of the essential requirements before a judge sitting in an extradition case, I think this proposition is supported by the Extradition Act itself.

A That may be.

Q It says, in Section 13:

"The fugitive shall be brought before a judge who shall, subject to the provisions of this Act, hear the case in the same manner as nearly as may be as if the fugitive was brought before a Justice of the Peace charged with an indictable offence committed in Canada."

And I think there is another section which refers to



that point. The idea of the thing, is that he is not supposed to be committed unless there is evidence sufficient to have him committed at a preliminary hearing.

A Yes, I think it is a prima facie case which has to be made out, to accomplish that.

Q There is the additional safeguard, that he has the right -- and must be informed that he has the right -- to make a habeas corpus application within fifteen days, to a judge, which would be a High Court Judge.

I might say -- and perhaps you will agree, and perhaps you will not -- that these extradition issues seem to me to have been beclouded by extremist propaganda on both sides.

In my opinion, for what it is worth, the Americans asked for too much in 1942, and it seems to me that the propaganda in this country has been quite misleading. The impression has been given that some American officers could whisk a man out of the country at night, and all that sort of nonsense.

As a matter of fact, there are all kinds of safeguards for the fugitive whose extradition is sought. They have been set out with great particu-



larity in the Act.

A Yes. As a matter of fact, Mr. Jolliffe, there are more safeguards in connection with operations in respect to extradition than there are in some of the procedures followed right now in the United States,<sup>one</sup> which have been followed for a long time.

MR. GRUMMETT: And the same with our own courts.

THE WITNESS: I am talking about something different. I am talking about law, not the courts.

They have the process there of secret indictment.

BY MR. JOLLIFFE:

Q Before a Grand Jury?

A Yes, which means there is no charge laid against a man; he knows nothing about it; you go in with a file and get a secret indictment, and it is kept secret. And when he goes across the line, as far as we are concerned on this side, he is just picked up. Maybe that is one of the reasons why some of the particulars we have asked for have not been furnished, either to the Commission or to the





Broker-Dealers' Association.

Q I think that is one of the reasons.

A I think so.

Q That procedure of secret indictment always struck me as being an odd one, although it may not be different in principle than the issuing of a warrant for the arrest of a suspected criminal.

A They not only have the secret indictment, but they have the written indictment, the same as we have, and the same as the English have.

Q I do not suppose that the Broker-Dealers' Association at the moment is prepared to take any position on the new draft treaty which they probably have not seen?

A No.

Q You would want to wait until you saw it?

A Oh, yes, and it would be a matter then to make some decision as to whether, as an Association, we might make a representation at Ottawa, or whether we might not. It would depend on what it was, I suppose.

Q In your discussions with the S.E.C., did they at any time, draw attention to the Lamar case, as an example of their inability to extradite



offenders they wanted to extradite.

A No, there was never any discussion, that I recall, about the procedural side.

Q In Mr. McEntire's letter to this Committee, he referred to the Lamar case in the sense that it was a test case, and it demonstrated the impracticability of extraditing fugitives in cases of actual fraud?

A Yes.

Q I do not know whether you have read the judgment of that case, but it was on a number of different grounds, like the judgment of so many judges.

A I do not recall it. I may have read it, but I do not remember it. How old is that case, Mr. Jolliffe?

Q 1940, I think.

A Well, that is before my time.

MR. GRUMMETT: February 19th, 1940.

THE WITNESS: I had extradition proceedings when I practiced in Windsor on different occasions, but I did not know of the Lamar case until you mentioned it.



BY MR. JOLLIFFE:

Q Have you any comment to make on the other argument put forward by the S.E.C., and in particular by its Assistant General Counsel, Mr. Krohl, to the effect that there may be fraud in connection with securities which does not amount to fraud under the Extradition Act? The same argument is repeated in Mr. McEntire's letter, which you may not have seen.

A Well, I rather think, Mr. Jolliffe, it is a very loose expression. After all, fraud of the kind that would result in a conviction is pretty definitely defined in the Code.

Common law fraud for recovery in a civil action has been well defined.

People have a rather loose way of talking about fraud, but I suppose that it all depends on the point of view of, "What is fraud?", and what is fraud to Mr. Krohl in relation to the Securities Exchange Act might be a very different thing for me. We may not think in the same terms.

If you want the proof of that, you cannot find the word "fraud" used in the Securities Act of 1947. It was in the 1937 Act, but the word "fraud"



covers so much --

Q Let us assume that Mr. Krohl's understanding of the word may be quite different from ours in this country, but perhaps you may not be aware of that, perhaps you have not seen the letter?

A No.

Q Mr. McEntire's letter emphasizes that the S.E.C. has changed its position, and he makes his position very clear. I am glad it is on the record now, and I do not see how the S.E.C. can back away from it.

A You mean they have changed their position in respect to <sup>an</sup> ~~the~~ extradition Treaty?

Q Yes. That is most specific. I do not think it could be explained away at some future date. He says this, at Page 10 of his letter:

"Because of the public need for quick action, and since we are convinced that only those interested in perpetrating fraud will knowingly violate the registration laws of a friendly nation, we have revised our extradition proposals. We now urge that the treaty be amended so as to permit rendition in cases where fraud within the definitions





found in the Canadian Criminal Code, which we think most adequately cover the conduct engaged in by securities swindlers, is charged.

Your Criminal Code has, indeed, kept pace with modern developments in fraud techniques, as has ours, and to-day our two countries have laws which are similar in the details of fraud coverage."

What he is saying there is, that their proposal now is, to allow extradition in cases where the offence charged comes within the definition found in our Code. That is pretty definite.

THE CHAIRMAN: I do not think any question has been raised about that. We were consulted in connection with the proposed extradition treaty, and I have already stated here that the advice they asked us to give them was that any treaty should cover fraud by the Criminal Code, be clearly defined, so that every citizen would know exactly what he was up against. He did not see any objection to that, if the Federal Parliament thought well of it.

From the point of view of securities adminis-



tration, Mr. Lennox thought it might be helpful.

BY MR. JOLLIFFE:

Q What is your view of that proposal, Mr. McTague?

A I will speak personally and ex cathedra now, and I have a witness here, as far as that is concerned.

In October, 1949, I told the S.E.C. in full session when we appeared before them, in answer to a question, that they might as well forget ever trying to get extradition over here except on something like the basis to which you refer. I think Mr. Wisner will remember that.

Q Apparently now they have taken your advice.

A We had quite some fight about it before that. The man who was the Chief advocate of extradition, as it came up in 1942, was Mr. Kashin, who is now dead.

He was very determined he would not release any of the proposals he had there, and they used to have battles about it.

Of course, you know when you are talking about the S.E.C., you must have in mind that it is a tremendous organization; there are about eight



thousand people in the S.E.C., when you take in their regional offices across the States, and it is sometimes a little difficult, and it takes things a long time to incubate, and it takes a long time to get results <sup>from</sup> / initiation, and so forth.

Q Perhaps it is not fair to ask for your view off-hand on things which you may have just heard for the first time, but you know the Committee has a former judge of the Supreme Court before it, and it is a golden opportunity --

A To get back at me, eh?

Q No, to get some valuable legal opinions free gratis.

THE CHAIRMAN: As a witness?

MR. JOLLIFFE: As a witness.

THE CHAIRMAN: Under oath?

MR. JOLLIFFE: Yes.

MR. JAMES: That sort of puts him "on a spot". It has always been the other way around before, there was somebody on oath before him.

I think his opinion as to anything we could



recommend to strengthen the hands of the Securities Commission, and to assist them in the operation of the Act, would be very valuable to us.

THE WITNESS: I was quite interested yesterday in some of Mr. Jolliffe's questions with respect to these "fronts" or "backs", and how you were going to get at them, and so on.

At the outset, I have to confess that I did a lot of sweating over that, because I did appreciate that it was desirable, if there was a way of doing it, in a clear-cut manner, to bring some of these people who are on the fringe, or back of these difficulties, within disciplinary action, or right of prosecution, or something of that kind by the Securities Commission.

I worked a long time, and I have found the big difficulty was to try and get a definition which covered precisely the type of individual you were after, without, at the same time getting people who were engaged in a legitimate way into difficulty, in almost any kind of a definition you tried to devise.

I might mention this to you; this word





"front" or "some of the fronts for somebody else", perhaps requires a little bit of precision in the thinking, and I would say you have really got to come to the conclusion that somebody other than the registrant is dominating the business.

There are cases -- and it is an ordinary transaction -- for people to loan money to brokerage houses. It is not unusual on the Exchange, and so on. But, at the same time, in that type of transaction, you would never dream of calling the man who had the registration a "front". He is not a "front", because he borrows money from somebody, and there are a lot of things in the way of legitimate business he can do.

Now, you point out the extraordinary situations which are pretty good evidence of the fact that somebody in the background is dominating the holder of the registration. We have had that. Mr. Lennox has had to deal with it two or three times, and it has been dealt with, before, in my time.

I remember I took away the registration of Mr. DePalma who has been referred to here, and whom I believe was once in the hands of the S.E.C. at a later date, **and** I never saw such a storm of indignant



letters, and even telegrams, and so on, from all over the countries -- from the United States and Canada -- about the constructive work in connection with the development of things. Nevertheless, we were not impressed by that too much.

But somebody else, I have forgotten just who -- maybe Mr. Duggan or Mr. Cameron would remember -- I think the name was Wright, although I may not be correct on that--but he got a license, and it became quite apparent after a while that DePalma was running the business. Of course, we took that registration away.

There is a lot in this, gentlemen. It is curious the way the methods of operating in this business change, and how they are changed by economic variations. Mr. Lennox touched on it slightly yesterday.

The first cases I had to deal with when I came into the Commission -- and that was only six years ago, roughly, in 1945 -- were to a large extent cases of where salesmen were going from door to door and were peddling stock, particularly in sections where the farmers were thought to be reasonably prosperous, and there were not mortgages



on the farms.

I remember up in Middlesex County, and also sections around Kitchener and Waterloo and Guelph, and so on. That was a very objectionable technique at that time. That will account to you for the prohibition which was put into the Act which forbade salesmen or securities dealers calling at private residences, as they put it. That was the way we met that situation at that time.

Well now, that has disappeared, and then I think the next kind of technique which followed was the beginning of these "send-outs," and the use of the telephone. That grew. They did not go out any more. They did not go to the farmer's back door; they did not go to the retired schoolteacher, and take her last dime. That era was over.

But the next thing was the flamboyant literature and the use of the telephone. That changed, because the business itself started to develop along these lines, that they worked in primary distributions to the fullest extent they could, through the facilities of the Stock Exchange, and that is what is going on now, as far as that is concerned.

The originator of the "deal", as they



called him, sold it to a certain point, and then it is put on the Stock Exchange, and the trading takes place, so that there is primary distribution going out, and optioned stock going back into the treasury, and so on.

I think recently it is rather more noticeable, since I left the Commission. These very huge "send-outs", as they call them, are more noticeable now.

Now, these things I am sure, in my experience, seem to run in cycles. When hundreds of thousands of pieces of mail are sent out, they cost so much to send out, and they cost so much to print, and so on, and when the returns that come back is on a reduced basis, so they do not get enough to take care of the printing, it disappears, and it has disappeared, and will disappear.

You mentioned yesterday, Mr. Jolliffe, that there was a period right now where they were kind of dried-up propositions, because of the fact that this Committee was sitting, and the fact that there had been recently a hue and cry in the United States, and so on.

A Those are all factors. But you just cannot exactly estimate it at any time,





but as soon as it does not pay, when they cannot meet their costs in sending out that huge amount of stuff -- and it costs a lot to do that, I think, if my memory is right, it is sixty-two percent. -- then it disappears. In other words, if from the "send-outs" you get two percent. in replies, that is probably about what margin you can operate on. If it goes to less than two percent., you are sunk, and that happens right along.

BY MR. JOLLIFFE:

Q About two thousand dollars on one hundred thousand dollars?

A That is right. That is good.

Q By "replies", that would not necessarily mean orders?

A Oh, no.

Q Just enquiries?

A They are enquiries. The "send-out" very frequently has a coupon attached, and it is intended that when the coupon is detached, and somebody requests information, that is the method that is followed, so that they are going to probably be relieved, under the specific wording of the Act, from



prosecution for telephoning. If you invite them, they are relieved from prosecution, and that is the way it is done.

Q Under Section 52?

A I do not know of any amendments to the Act which are required at this time. I would be inclined to perhaps put more responsibility on people who are registered, and, therefore, within the jurisdiction of the Commission, as far as disciplinary matters are concerned, and also within the jurisdiction of these various associations, because let me assure you, these associations do a great deal more -- not only the Broker-Dealers' Association -- than is realized, to keep this business in good shape.

BY MR. JAMES:

Q Do you agree with Mr. Lennox, that there is a percentage of about 12½ with whom you have difficulty?

A I would not like to be that specific. That would be only a guess on my part. As a matter of fact, if I were asked when I was on the Securities Commission, it would even then have had to be a guess. It is never static, and you cannot tell.



You get suspicious of certain things, and you follow them up, and maybe you accomplish something, and maybe you do not, and the first thing you know, fire breaks out somewhere else. I could not even guess at it.

Q I was over in Michigan about two weeks ago, and a cousin of mine was telling me about a telephone call from Chicago, trying to sell him some Canadian securities?

A Certainly.

Q Would he be hooked up with these fellows here?

A He might be. I know of two or three cases where groups in Detroit -- where the original backers of some mining promotion, which was coming along to where they were putting on quite a pressure-selling campaign to sell stock over in Windsor. Some clients of mine bought some one time, and I had trouble about it.

Q I was wondering, Mr. McTague, if quite a number of the complaints we are getting concerning the Canadian stock salesmen are not originating in Chicago, or elsewhere in the United States, and not originating here at all?



A Oh, I would not say that. They are doing it over there, all right.

BY MR. GRUMMETT:

Q Everybody recognizes that.

A I would not be at all surprised if some men --

BY MR. JAMES:

Q It is not all over there, though.

A No, that is right. We had situations during my time which were quite a job. I think Mr. Cameron prosecuted one group down in Windsor which had a place in a Windsor hotel, and were operating out of Detroit, and, as a matter of fact, were rather doing it in a way that placed the blame to some extent upon Toronto,

BY MR. HOUCK:

Q I asked Mr. Lennox, Mr. McTague, about the origination of these names on the lists, to whom they sent material and telephoned. How do they obtain the 100,000 names?

A They just pay good money for them. There are institutions in the United States -- I forget





the name; I used to know it -- which advertize these lists.

Q Mr. Lennox referred to one in St. Louis.

A Yes. They will furnish you with lists. Some of them are what they call the "sucker lists", that is, people who are known to have invested in the type of securities which is being offered.

In other cases, they are just abstracts from telephone books, and so forth. I think you can get them here, Mr. Houck, too. Some lists are prepared here.

BY MR. JANES:

Q But under the S.E.C., they have a certain responsibility to control these people who are sending these "sucker lists" out.

A I do not think so. It would be pretty difficult for them to control that sort of thing.

BY MR. JOLLIFFE:

Q Those lists are sold, not only to brokers?

A That is right.

Q They are sold to other businesses which are engaged in what are called "direct mailing advertising"?



A Sure, that is right.

Q And to magazines?

A Yes.

BY MR. JAMES:

Q To those doing a legitimate business?

MR. JOLLIFFE: Yes, I would say so.

THE WITNESS: I think it would be very difficult to control.

MR. JOLLIFFE: There are such things as voters' lists from which you can get a lot of names.

THE CHAIRMAN: And telephone books, but the return is so small, they prefer something more selective.

MR. JOLLIFFE: The voters' lists disclose lists of names by areas.

A My experience with voters' lists is that you get more information than votes.

MR. JOLLIFFE: I think that is very often true.



BY MR. JOLLIFFE:

Q On the Act itself, Mr. McTague, you said you had given considerable thought to this matter of the "fronts", and their "backers", in connection with the Act?

A Yes.

Q You were here, I think, when Mr. Lennox referred to Paragraph "T" of Section 1 --

A You mean the definition of "trading"?

Q Yes, you remember the words:

"(t) 'trade' or 'trading' includes,

(i) any solicitation for or obtaining of a subscription to, disposition of or trade in or option upon a security for valuable consideration whether the terms of payment be upon margin, instalment, or otherwise.

(ii) any attempt to deal in, sell or dispose of a security or an interest in or option upon a security for valuable consideration whether the terms of payment



be upon margin, instalment, or otherwise.

(iii) any participation as a floor trader in any transaction in a security upon the floor of any stock exchange.

(iv) any receipt by a person or company registered for trading in securities under this Act of an order to buy or sell a security, whether the order is received over the telephone or in person, and

(v) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing."

Were you the author of that?

A       No, that came out in the 1937 Act originally. I do not know. It is rather an old one .

I do not think it is very helpful, Mr. Jolliffe, unless you can get them registered, you see. These people are not registered, and I do not know what you are going to do under the Act, unless for trading without registration.





Q        These words are not restricted to registered people. It says:

"Trade or trading includes any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing."

Now, the "foregoing" are, any solicitation for or obtaining of a subscription to, disposition of or trade in or option upon a security for valuable consideration, whether the terms of payment be upon margin, instalments or otherwise; any attempt to deal in, sell or dispose of a security, and so forth; any participation, and so on.

A        What I am trying to put to you is this, Mr. Jolliffe, if somebody was registered, the Commission has the power to take away the registration, to take away his livelihood, and so on.

That would not apply in the case of somebody who was back of the scenes.

The only thing that you could do would be to launch a prosecution, if you felt you had definite enough proof, and that is a very difficult thing to



prove.

BY MR. GRUMMETT:

Q Or squeeze the "front" a little bit, through the Commission.

A Oh, you can do that. That has been done right along.

Q That is hurting the back end?

A Yes. Those cases -- two of them -- which Mr. Lennox was discussing with Mr. Jolliffe yesterday afternoon were exact cases of that kind, and there have been other cases as well.

BY MR. JANES:

Q What is your reaction to the suggestion of bonding dealers, agents, and salesmen?

A I know this from experience, because the bond was in vogue, in my time. The bonding companies do not give bonds except after a very careful investigation.

Q I hope so. That would be all to the good.

A Yes. I always felt that way. Of course, in my time we had a substitute way which I think I inherited.



A man could file a bond of five thousand dollars, or ten thousand dollars -- whatever it was -- a company bond; otherwise he could put that up in the form of securities, and they did lodge securities in the amounts of five thousand dollars or ten thousand dollars, and that was all to the good, too.

Under the Act as it was then, that bond had to remain a certain length of time after his registration was finished and the monies became available to the plaintiff in ~~case~~ a plaintiff had succeeded in a fraud action.

(Page 2983 follows)



BY MR. JOLLIFFE:

Q. A civil action?

A Yes. I do not remember any of them in my time.

Q What about a fine? Would it have been available to pay a fine?

A Oh no. In that sense, perhaps the bond is a good idea, and I understand that a recent suggestion in connection with it was made by the Broker-Dealers Association. Mr. Wismer can speak on that.

There are a lot of houses which carry bonds voluntarily to cover their liabilities in connection with loss of money and defalcations, and that sort of thing. That is not a fraud bond. As a matter of fact, I do not think you could find any house which would underwrite a bond which was going to specifically indemnify somebody against fraud. It would have to be worded very carefully, and it would be very difficult, because it is just what we were discussing, Mr. Jolliffe; you might have to get a university law school research department to ascertain the liability under the use of a word of that kind.

MR. JANES: I think it might eliminate a lot of these loose-tongued salesmen.





A Oh, it did.

Q After all, we are here to protect the public, not the salesmen. We do not care about them. If they cannot sell bonds, they can dig ditches, or something.

A I would not put it that roughly.

Q I have no sympathy with them at all.

BY MR. HOUCK:

Q. You referred, Mr. McTague, about the development of our natural resources. May I ask you this question, and put it in two parts?

Do you think the way the Ontario Securities Act stands at the present time has a tendency to increase or decrease the development of our natural resources? Do you think it encourages the bringing in of American capital?

A I would say this, Mr. Houck; certainly many people who have been associated with the mining industry over a period of years, have the very definite viewpoint that any Act which tends to interfere or restrict their activities in getting money, and so on, is holding back the development of natural resources.

I have always kind of felt that we live in a rather different age from those in the rugged, pioneering days.



If you read the report of the Urquhart Commission, you will find a good many observations along that line.

There is no doubt about this; that where you have <sup>the</sup> government regulations which you have, under the Securities Act, you are placing a certain amount of restraint around the investment of capital, but my view is you have a duty to do that, because it is not only the promotion of the development of the natural resources by risk capital, but also there must be certain rules.

Roosevelt expressed it this way, at the time the Securities and Exchange Act was sent to Congress for enactment, that "By this Act, the old simple maxim of 'caveat emptor' -- the purchaser beware -- was abolished to a large extent so as to introduce the principle of making the vendors beware so that the vendors under that Act were obliged to make, full, plain, and true disclosures of their wares, and would be liable to losses and even punishments, if they did not".

That was Roosevelt's way of expressing it. I think that is a very neat way of putting it.

This security business has such a long history back of it; you do not get the tangibles; it is not like buying a horse that has a spavin or like buying a bull who cannot perform; all you buy is the ownership in an equity and that leads to a lot of temptations,



and a former Chairman of the Securities and Exchange Commission, later Mr. Justice Douglas of the United States Supreme Court, put it this way; "We might as well face the fact that fraud is immortal, and you can never abolish it, but by some means keep on trying to control it".

I may have digressed there a little.

BY MR. JOLLIFFE:

Q. Are there not other ways by which investors can be discouraged, such as by restrictive legislation, and they can also be discouraged in other ways, such as by lessening their earnings?

A Oh yes.

Q Or even by publicity? That, too, can restrain the flow of capital.

A That is right, certainly.

Q Or even perhaps by war or rumours of war.

A Yes, and very recently by rumours of peace.

MR. GRUMETT: That is a sound observation, I think.

BY MR. JAMES:

Q. Do you think of anything we could do to make the salesmen as responsible --

A That is what you have to do. That is exactly



how it has got to work. The standards or ethics of people engaged in the business have to be constantly improved.

Now, that to a large extent, is a matter of education, and it is a matter of devising ways and means of seeing that the responsible fellow can carry on and the irresponsible fellow can not. I think there has been a vast improvement in that field here, particularly in the last three years, during Mr. Lennox' regime. But mind you, I think there was improvement before that, as far as that is concerned.

Q We should give you a little praise?

A On this special subject you bring up, I really deal believe that people have got a great more sense of responsibility than they had before, and I think they will continue to get it.

Of course, you can never let down. There is always the odd one who will break out. I do not know of anything you can do by legislation, anymore,

BY THE CHAIRMAN:

Q. May I ask you this, Mr. McTague? You have been very closely associated with the Broker-Dealers' Association, and this may not be a fair question, because you act as Counsel for them --

A That is the way in the legal profession to





look after your old age, by creating things, and then having them stick with you. That is where you get a better chance than a Doctor.

Q Could you give your view as to what progress has been made by the Association itself in disciplining their own members and improving the conditions of the business?

A Well, whatever I could say in that regard, Mr. Chairman, would only be anticipating a record which I think Mr. Wismer will produce to you. I do not know but that it sounds too impressive for a man to be praising his own clients, and I would rather have the record speak for itself, if you do not mind, in that regard.

BY MR. GRUMMETT:

Q. Do you think it safe to place too much reliance on ethics? In your opening remarks, you rather stressed the ethical angle; I think you over-stressed it.

Consider, for instance, some organization -- such as yours and mine -- which is controlled by ethical conduct, and before you can become a practicing lawyer, it takes years of study and a lot of money, but you have prepared yourself for some future career.

A That is right.

Q But in connection with the men we are dealing



with, or about whom we are speaking here; they can be grocers today, and broker-dealers tomorrow.

A Oh no, not any longer, Mr. Grummett.

Q They have nothing to lose.

A They have to pass examinations. I have watched two of them write examinations just lately.

BY THE CHAIRMAN:

Q. You have this entirely different situation. The broker-dealers, it is true, have an Association, and have their own rules of conduct, and their own methods of disciplining themselves but in addition to that, they have a Securities Commission which is supervising them all the time?

A That is right.

Q And scrutinizing their activities?

A Yes.

Q Which is quite different from the legal profession or the medical profession or other professions, which have had long traditions of that kind.

MR. GRUMMETT: That is what I wanted to point out. Anything we suggest to improve the situation I think should be along the line of strengthening the hand of the Securities Commission.

THE CHAIRMAN: In addition to that, it seems



to me -- subject to what Mr. Wisner may tell us -- that in theory, the more the business can regulate itself, the more healthy the business will be.

This organization is a very new organization, and it generally takes some years for an organization or people engaged in a business of this kind, to establish effective regulation of their own affairs.

But if you get to that point, where there is full and adequate regulations by the people in the business themselves, of their own activities, then most of these problems, with which we are faced today, will become more and more limited, and will disappear, that is, in principle. It may be theoretical but, on the other hand, if you leave it entirely to the governing authorities to do everything, including what the broker-dealers are trying to do for themselves, then, as Mr. McTague expressed it on Tuesday, you are perpetually in the "jungle".

MR. JOLLIFFE: But some matters are more easily regulated than others.

THE CHAIRMAN: That is right.

MR. JOLLIFFE: Let us take as proof, an example in Mr. McEntire's letter to the Committee, in which he makes a very interesting concession. I



do not want to take any sentence out of the context, but he says:

"There has been some recent improvement in the quality of the literature mailed to the States, but misrepresentations in the familiar patterns continue to be made, chiefly over the telephone".

I think the B.D.A. can take some credit in the improvement in the quality of the literature, and probably justly so, because it is all read by the B.D.A. and sometimes amended or edited by the B.D.A.?

A That is right.

Q And that is probably the reason for the change which Mr. McEntire was fair enough to note.

A I think so.

Q But you will notice that he also says:

"But misrepresentations in the familiar pattern continue to be made, chiefly over the telephone".

How can you, or how can anybody regulate or improve the quality of what is done over the telephone?

A I will suggest a way to you, which was suggested to the S.E.C., but they did not do anything about it. There may be good reason. I do not know.





But I think you will find -- whether you have a copy of the Broker-Dealers Act with the restrictions, ethical conduct, and so on --

Q Yes.

A It comes right under that, and I am satisfied you have a Board of Governors which has been acting in such a way, for a comparatively long time -- that is the Irish way of expressing it -- that salesmen would go out of business if they felt it was reasonably established.

Q Is that not the problem? It is the ethical problem, let me put it, in Mr. Lennox' evidence, in the Norwitt case, where he said:

"These figures demonstrate a fact well known to the Commission that as a matter of policy, high-pressure methods are used over the telephone outside the Province when the chances of detection and subsequent proof of fraud are remote".

I think that confronts the B.D.A. as well as the Commission?

A I think it does too, but not to the same extent. After all, these people know, they are not answerable, as far as that is concerned, to anybody in connection with their decision along that line. It



is the same as a decision to disbar a lawyer or doctor.

Q I do not follow you on that.

A I mean in the case of the B.D.A., it has nothing essentially to do with anything else but what is labeled "ethical conduct". That is all. A man could be guilty of unethical conduct, under the code of the B.D.A. but not be guilty of fraud.

Q Oh quite, but can you conceive of a telephone conversation which might constitute "unethical conduct"?

A Yes.

Q The difficulty is in establishing it? It is a basic difficulty?

A They are not bound by any particular rules. That is what we were trying to accomplish, to ascertain what was being said over the telephone, whether the stock was going to be on the Exchange, or what the conversation was, and have the person who is making the complaint, make an affidavit and send it to the Broker-Dealers' Association.

BY THE CHAIRMAN:

Q. Surely the broker-dealers are much closer to the business than any Securities Commission could be?

A Yes..

Q And they surely would be able to sense in the



first instance what might be going on, and it would be within their ability to act effectively much more quickly than a government authority, which is looking in from the outside?

A That is right.

Q That is one of the basic considerations which was involved in constituting this organization?

A That is right.

Q Whether or not they have done it to the fullest extent up to date, I cannot say. We will perhaps hear a little more about that from Mr. Wismer. But here is an organization three years of age. We will see whether it has made that degree of progress one would expect.

MR. JOLLIFFE: We are forced to take into account the probabilities. We can not escape that.

We had the same problem in connection with the sale of ammunition, when discussing it with the police. One of the probabilities if <sup>where</sup> ammunition is sold freely, particularly ammunition suitable only for use in automatic weapons, there is a probability it will be used for unlawful purposes.

We also know that many people will be less careful what they say on the telephone than what they know is going down in permanent written form. That is



a probability. It just cannot be avoided.

THE CHAIRMAN: Gentlemen, it is now 12.00 o'clock. Shall we adjourn until 2.30 on Monday?

MR. JOLLIFFE: Yes, Monday afternoon.

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---The witness temporarily retired.

---Whereupon at 12.00 o'clock noon, the further proceedings of this Committee adjourned until Monday, August 27th, 1951, at 2.30 of the clock, P.M.

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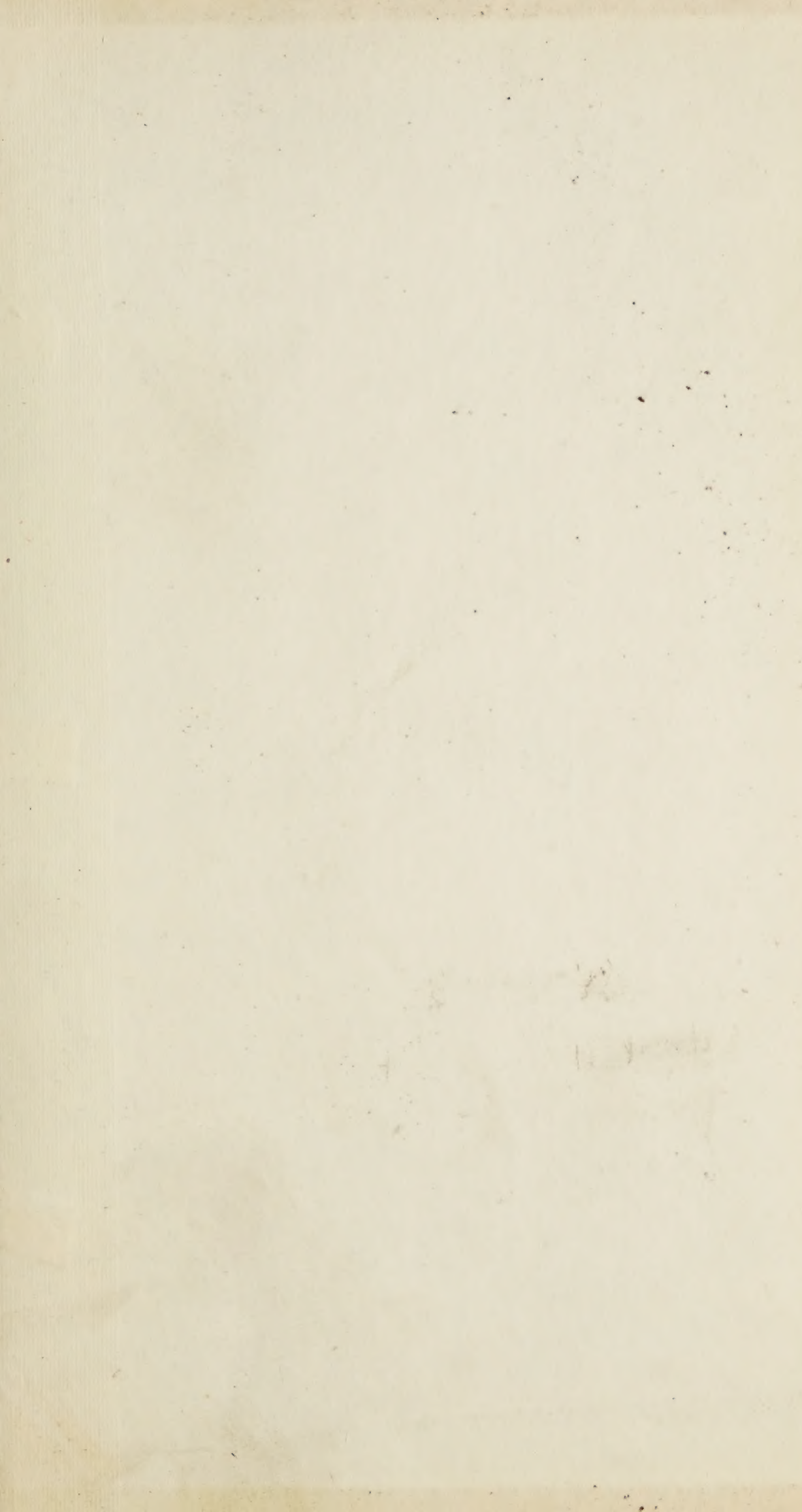
















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